

05.09.2024
Item No.13
Court No.11
Avijit Mitra

MAT 1403 of 2024
with
IA No.CAN 1 of 2024
Moonlight Residency Pvt. Ltd.
Versus
State of West Bengal & ors.

Mr. Saptansu Basu, Sr. Adv.,
Mr. Debjit Mukherjee,
Mr. Meghajit Mukherjee,
Mr. Debrup Bhattacharya,
Ms. Sushmita Chatterjee,
Ms. Sweta Mohanty,
Ms. Srijeeta Gupta,
Ms. Sonia Das
...for the appellant
Mr. Chandi Charan Dey, Ld. A.G.P.,
Mr. Priyabrata Batabyal
... for the respondents

The present intra-court appeal has been preferred to question the justifiability of the order dated June 25, 2024 passed by the learned Single Judge in WPA 13367 of 2023.

Despite service, no one appears to represent the respondents nos. 3 to 6.

Mr. Basu, learned senior advocate representing the appellant, submits that the appellant is the owner of the lands in question. Recently, some individuals encroached upon these lands and began constructing a road, pavement, and a concrete drain. Upon investigation, the appellant learnt that this work was undertaken based on a work order issued by the Midnapore-Kharagpur Development Authority (MKDA). The appellant submitted a representation to the MKDA on May 30,

2023, and also filed a further representation with the District Magistrate of Paschim Medinipur. Despite receiving these representations, no action was taken, which prompted the appellant to invoke the extraordinary jurisdiction of this court by filing a writ petition, WPA 13367 of 2023, primarily praying for the following relief:

B) A Writ in the Nature of Mandamus do issue upon the Respondent Authority more particularly the Respondent Nos. 3 to 6 thereby directing them to forthwith stop the construction work of rigid pavement with concrete high drain and road and to withdraw and/or remove all the existing/part construction work made by them from the Petitioner's land mentioned in paragraph 3 hereinabove and further direction be issued to restore the said plot of land to its original position'.

He argues that during the hearing, both the State and the MKDA explicitly admitted that the lands were not acquired following due process of law, yet the MKDA, has undertaken construction works on the appellant's land. He further contends that these admitted facts were brought to the attention of the learned Single Bench, which, however, glossed over them and relegated the issue to the District Magistrate, Paschim Medinipur, for resolution. He submits that the MKDA is established under the West Bengal Town and Country (Planning and Development) Act, 1979 and therefore, the District Magistrate, Paschim Medinipur, has no jurisdiction to address the issue.

He strenuously contends that, in light of the admissions made on behalf of the State and MKDA, this Bench should invoke the principle enunciated in Order XII Rule 6 of the Code of Civil Procedure, 1908, and pass an order permanently restraining the MKDA from disturbing the appellant's peaceful

possession and enjoyment of the lands without following due process of law.

Mr. De, learned Additional Government Pleader representing the State respondents, concurs with Mr. Basu's contention that the State has expressly admitted that it has not acquired the land.

He argues that the order under appeal reflects that the issue has been referred to the District Magistrate, Paschim Medinipur, solely based on the prayer made on behalf of the appellant before the learned Single Judge.

Heard the learned advocates appearing for the respective parties and perused the materials on record.

Indisputably, there cannot be any quarrel in accepting the fact that both the MKDA and the State have admitted that they did not acquire the land following due process of law. The record reveals that on December 28, 2020, the Executive Officer of the MKDA issued a work order to Samanta Engineering for the 'Construction of Rigid Pavement and Concrete High Drain from Mahubub Nagar towards the drainage outlet of NH-06 in Ward No. 04 under Kharagpur Municipality.' The work order specified that if the work was not initiated within 15 days of issuance, the contract would be canceled and further actions would be taken. Additionally, a deadline of 60 days from the date of issuance was set for the completion of the work.

Subsequently, on May 30, 2023, i.e. after almost two and a half years, the appellant filed a complaint with the Chairman of the MKDA, alleging that on May 16, 2023, some unknown individuals were attempting to encroach upon a portion of the

lands and construct a rigid pavement and concrete high drain. On enquiry, the appellant came to learn that these individuals were from Samanta Engineering and that their actions were based on the work order dated December 28, 2020.

As noted previously, despite being served, neither the MKDA nor Samanta Engineering is represented before us. The appellant does not want the intervention of the District Magistrate, Paschim Medinipur. Instead, the appellant wants us to invoke the principles set out in Order XII Rule 6 of the Code and issue an order, resembling a decree of permanent injunction, restraining respondents Nos. 3 to 6 from creating any disturbance to the appellant in his peaceful possession and enjoyment of the land, based on the admissions made by the State and MKDA.

In the case at hand, both the State and MKDA admitted that they have not acquired the lands but there is no admission on their part that on May 16, 2023, the unknown individuals whom the appellant identified as the men of Samanta Engineering made an attempt to encroach upon the land and make construction thereon, based on the work order dated December 28, 2020. Therefore, there are some disputed questions of fact.

In the order under the appeal, the learned Single Bench has observed as follows:

“It is submitted on behalf of the petitioner that the representation dated 30 May, 2023 ought to be considered by the District Magistrate.”

The learned Single Bench observed that the representation dated May 30, 2023, raised certain factual issues, such as, whether the land was public land which has been used by the local residents for more than twenty-five years or whether the land belonged to the appellant and as such, these issues were referred to the District Magistrate (respondent No. 2) for determination. Furthermore, those issues were relegated based on the prayer of the writ petitioner/appellant. Now, the appellant has changed its stand and is seeking an order to permanently restrain the respondents from disturbing the appellant's peaceful possession and enjoyment of the land. We are of the opinion that it would not be apposite to pass the order, as prayed for by Mr. Basu, before the issues are resolved.

In this context, having regard to facts and circumstances of this case and upon consideration of the submissions advanced by the respective parties, we do not find any infirmity or any error in the order impugned in the appeal that would justify interference with the same. Consequently, the appeal and the connected application are dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty, J.)