

Ml- 15.01.2024
74 Ct.15
rkd

W.P.A. 21443 of 2018

Sagarmay Ghosh

-vs-

The State of West Bengal & Ors.

Mr. Sagarmay Ghosh

....for the petitioner (In Person).

Mr. Sira Prosad Ghose

....for the respondent no.8.

Ms. Mousumi Bhowal

....for the Municipality.

In the writ petition petitioner has, *inter alia*,
prayed as follows:

“a) Issue a writ in the nature of Mandamus commanding the Respondent authorities particularly the Respondent no. 2 to 4 herein to act in accordance with provisions of the law and to act by following the rule of equality by extending every possible help and/or assistance and/or protection to the petitioner to live his life and to enjoy his property peacefully and also directing the Respondent authorities concerned to demolish the illegal and/or unauthorized construction so constructed by the Respondent No. 8 without having any sanctioned and/or valid building plan forthwith at the Municipal Holding No. 129,

Ward No. 02, within the local limits of the South Dum Dum Municipality being the respondent no. 2 herein and to submit a report before the Hon'ble Court regarding such compliance within a specified period as fixed by your Lordship."

Petitioner has instituted this writ petition on 10th October, 2018 whereas a Title Suit being No.158 of 2013 was instituted by the petitioner, *inter alia*, praying of a declaration that the petitioner being the plaintiff is the absolute owner of the property as mentioned in "B" and "B1" schedule and has also prayed for removal of illegal construction alleged to have been made by the defendant being the respondent no.8 in this writ petition from "B1" schedule property.

The case, which has been made out in this writ petition, is that the petitioner is the owner of holding no.130 as described "B" schedule property in the suit whereas respondent no.8 is the owner of "C" schedule property being holding no.129 and a strip of land intervening "B" and "C" schedule property has been described as "B1" schedule property in the suit. According to the petitioner,

there is no dispute with regard to the right, title and interest over the “B” and “C” schedule property as possessed and enjoyed by the petitioner and the respondent no.8 respectively. According to the petitioner, respondent no.8 has made an unauthorised construction over the “C” schedule property (holding no.129) which is required to be demolished.

It is also submitted by Mr. Ghosh, who appears in person, being the petitioner, that pendency of the aforesaid title suit does not make any difference as there is no bar in deciding the validity of the construction made by the respondent no.8 on “C” schedule property (holding no.129). Therefore, the petitioner prays for a direction upon South Dum Dum Municipality to take necessary steps for determination of the nature of construction made by the respondent no.8 and if, it is found that such construction is unauthorisedly made a direction needs to be given by the Municipality for demolition of the same.

The prayer of the petitioner is resisted by the learned advocates representing South Dum Dum Municipality as well as respondent no.8.

It has been jointly submitted by the learned advocates representing the Municipality and

respondent no.8 that considering the nature of issue involved in the pending aforesaid suit the issue involved in this writ petition may not be decided at this stage and in this regard attention of this Court has been drawn to the prayer made in the plaint and the order passed by the lower Appellate Court dated 27th April, 2017 on a Misc. Appeal No.127 of 2016.

It is contended on behalf of the respondents that in the aforesaid title suit petitioner being the plaintiff therein has made a prayer for declaration that the plaintiff is the absolute owner of "B" and "B1" schedule property and also has prayed for removal of illegal construction as standing over the "B1" schedule property which is alleged to have been made by the respondent no.8.

According to the respondents since a case of encroachment of "B1" schedule property has been made in the aforesaid title suit and petitioner has prayed for declaration of right, title and interest over the said "B1" schedule property the present writ petition may not be decided during pendency of the aforesaid suit since the municipality will find it difficult to adjudicate the nature of construction made on "C" and "B1" schedule property since part of "B1" schedule property comes under the

possession of the respondent no.8.

Having heard the learned advocates representing the parties and on perusal of relevant materials available on record, it appears that the case is attempted to have been made out that there is no impediment in giving direction upon the municipality to decide the nature of construction on “C” schedule property even during the pendency of the aforesaid title suit but on perusal of the order of the lower Appellate Court dated 27th April, 2017 it transpires that it has been recorded therein that *“the sole dispute is about encroachment of strip of land intervening of the property of the appellant and the respondent”*.

It emanates from the submissions made by the learned advocates representing the parties and also from the order passed by the lower Appellate Court that there is requirement to demarcate the said strip of land which is earmarked as “B1” schedule property in the suit. *Prima facie*, it appears that the part of “B1” schedule property comes under the possession of the respondent no.8 and part of it comes under the possession of the petitioner and petitioner has made out a case of encroachment of said “B1” schedule property by the respondent no.8 in paragraph 10 of the plaint.

If this Court proceeds on the premise that the petitioner has made out a case of unauthorised construction at the instance of respondent no.8 in “C” schedule property (holding no.129); since part of “B1” schedule property is possessed by the respondent or encroached by the respondent no.8 demarcation of which is pending in the aforesaid civil suit, it will be improper so far this Court is concerned at this stage to direct the concerned authority of municipality to adjudicate the nature of construction made by the respondent no.8. Accordingly, the writ petition stands dismissed.

However, this order shall not preclude the petitioner to take steps in accordance with law after disposal of the aforesaid suit.

However, there shall be no order as to costs.

However, it is made clear that no issues involved in the suit are decided here and the civil court shall be free to decide the issues accordingly.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)

