

D/L
Item No. 14
12.03.2024
KOLE

**FMA 838 of 2023
With
IA CAN 1 of 2023**

**Basudev Samanta & Anr.
-Vs.-
The State of West Bengal & Ors.**

Mr. Dilip Kumar Sinha,
...for the appellants.

Mr. Chandi Charan De,
Mr. Anirban Sarkar,
...for the State.

Mr. Uttam Kr. Bhattacharyya,
...for the respondent no. 5.

Mr. Partha Pratim Soy,
Mr. S. S. Pal,
...for the private respondents.

By consent of the parties, the appeal and the connected application are taken up for hearing together.

By the judgment and order dated July 26, 2023, impugned in this appeal, the writ petition of the appellants herein, being WPA 2573 of 2023 was dismissed by a learned Judge of this Court.

The appellants approached the learned Single Judge with the complaint that the private respondents have made illegal construction by encroaching on Government land.

Purba Medinipur Zilla Parishad submitted before the learned Single Judge that the land in question belongs to the Zilla Parishad. It was further submitted that the Zilla Parishad intends to execute a deed of lease in favour of the

private respondents in respect of the said land, for which, the private respondents have deposited the requisite fees.

It was the specific grievance of the writ petitioners that the construction raised by the private respondents has blocked their right of easement through the Government land i.e., the land in question. They submitted that such land is used by the writ petitioners for ingress to and egress from their property and would also be used by customers of the business, which the writ petitioners proposed to start shortly.

The learned Judge dismissed the writ petition with the following observations:-

“It is not in dispute that the land in question belongs to the Zilla Parishad who intends to execute deeds of lease in respect of the same in favour of the private respondents.

In view of such intention of the Zilla Parishad, it is immaterial as to when the requisite fees for execution of the deeds were deposited by the private respondents. The proposal of the Zilla Parishad and the private respondent cannot be brushed aside only on such ground. Since the Zilla Parishad, being the owner of the land in question, seeks to transfer the same in favour of the private respondents by virtue of deeds of lease, it cannot be said that the private respondents have made illegal encroachment upon the government land. Even if for arguments sake it is held that the construction made by the private respondents were unauthorised, the Zilla Parishad has sought to regularise the same by issuance of lease in their favour.

In view of the above, this Court is inclined to hold that the writ petition is devoid of any merit and the petitioners have no locus standi to challenge the status of the private respondents in respect of the land belonging to the Zilla Parishad, more so, when the

Zilla Parishad has decided to transfer the same in favour of the private respondents.”

Being aggrieved, the writ petitioners are before us by way of this appeal.

Learned Advocate for the appellants says that the land belongs to the State of West Bengal. The Zilla Parishad has no authority to grant any lease in respect of the concerned land in favour of anybody. Further, the private respondents have illegally encroached on the land in question and have made illegal construction.

Learned Advocates for the Zilla Parishad and the private respondents say that under the relevant statute, the land in question, which is controlled and managed by the Zilla Parishad, vests in the Zilla Parishad and Zilla Parishad is fully competent to permit others to be in occupation of such land. This is disputed by learned Advocate for the appellants.

Be that as it may, we find that the appellants have made a representation dated October 14, 2022 to the Sub-Divisional Officer & Sub-Divisional Magistrate, Tamluk Sub-Division, District Purba Medinipur complaining of alleged unauthorized construction and obstruction and/or encroachment by the private respondents. We are of the view that ends of justice will be served if such representation is disposed of by the concerned Sub-Divisional Officer in accordance with law.

Accordingly, we direct the concerned Sub-Divisional Officer, being the respondent no. 3 herein, to dispose of the

representation made on behalf of the appellants, dated October 14, 2022, in accordance with law, by passing a reasoned order within a period of twelve weeks from the date of communication of this order by the appellants to the respondent no. 3 along with a copy of the said representation, after affording opportunity of hearing to all concerned parties including the appellants, the Zilla Parishad and the private respondents herein. In the event it is found by the respondent no. 3 that there is merit in the grievance of the appellants/writ petitioners, appropriate measures will be taken by the respondent no. 3 in accordance with law.

Except as aforesaid, we do not interfere with the order of the learned Single Judge.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted by the respondents.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Supratim Bhattacharya, J.)