

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***MAT 1919 of 2024
(CAN 1 of 2024)***

***Prabir Halder & Ors.
-Vs-
State of West Bengal & Ors.***

For the Appellant : Mr. Dyutiman Banerjee, Adv.,
Mr. Vishal Mallick, Adv.

For the State : Mr. Lalit Mohan Mahata, AGP,
Mr. Prasanta Behari Mahata, Adv.

For Respondent No.5 : Mr. Prabir Maji, Adv.

Heard on : 04.10.2024

Judgment on : 04.10.2024

Joymalya Bagchi, J. :-

1. Appellants are aggrieved by the judgment and order passed by the Hon'ble Single Judge relegating the appellants/writ petitioners to agitate their grievances before the Civil Court.

2. Crux of the appellant's grievance flows from non-consideration of his representation made to the Panchayat authorities alleging unauthorized construction and the running of a saw mill by private respondent No.5.
3. Learned Advocate for private respondent submits construction is an old structure and not liable to be demolished.
4. It may not be out of place to note private respondent No.5 complaining that appellants and others were obstructing his running of the saw mill had approached this Court in WPA 15680 of 2022 and a learned Single Judge directed the police authorities to see there was no obstruction in running the mill. Subsequent thereto, another writ petition being WPA 11523 of 2023 was filed by the private respondent which was also disposed of observing, the dispute between the parties is civil in nature.
5. Thereafter, a civil suit has been filed by the appellants against the private respondent but no order of injunction has been passed in favour of the appellants.
6. Relying on the aforesaid facts, Hon'ble Single Judge was of the view, the grievance of the appellants ought to be agitated in the pending civil proceeding and dismissed the writ petition.
7. Hon'ble Judge had failed to consider that the prayer in the writ petition was for removal of unauthorized construction made by private respondent No.5 and representation had been made to that

effect before the Panchayat authorities being annexed at pages 29-30 of the stay application. Power is vested with the Panchayat to make recommendation to the Sub Divisional Officer for demolition of unauthorized construction. This issue cannot be addressed in the civil suit pending between the parties.

8. In such view of the matter, we direct respondent No.3 Pradhan, Radhakantapur Gram Panchayat, Gillarchat, P.S. Raidighi, Dist. South 24-Paraganas to consider the representation of the petitioner at pages 29-30 of the stay application and after giving opportunity of hearing to the parties take a decision whether the construction is an unauthorized one.
9. Needless to mention if respondent no.3 is of the view that the construction is an unauthorized one, he shall forward its order to the Sub Divisional Officer for necessary steps under sub-section (5) of the said provision of law.
10. We make it clear we have not expressed any opinion with regard to the validity of the construction which is kept open to be decided by respondent no.3 independently and in accordance with law.
11. Respondent No.3 shall complete the enquiry and pass necessary order within three months from the date of communication of this order.
12. With these directions, appeal and connected application are disposed of.

13. There shall be no order as to costs.
14. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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