

February 7, 2024
Sl. No.38
Court No.19
s.biswas

CO 3995 of 2023

Jubbar Gayen
vs.
Habibur Rahaman Sk. and others

Mr. Partha Pratim Ray
Mr. S. Sanyal

... for the petitioner

Mr. Sounak Bhattacharya
Mr. Sandip Das

... for the opposite parties

This revisional application arises out of an order dated September 16, 2023 passed by the learned Civil Judge (Junior Division), 1st Additional Court at Diamond Harbour, District South 24 Parganas, in Title Suit No.29 of 2010.

By the order impugned, the learned court allowed the petitioner to repair the alleged dilapidated rooms under his possession, but did not allow any permanent construction.

The petitioner had filed an application before the learned court praying for permission to construct on the 42 feet x 30 feet area under his possession in the suit property. The prayer was made on the ground that there was a proposal for sanction of funds in favour of the petitioner under the Pradhan Mantri Awas Yojana. On such proposal, the petitioner would be entitled to some financial help from the government and he would be in a position to re-construct the dilapidated structure as per the scheme formulated by the government for the poor.

Mr. Roy, learned advocate appearing for the petitioner, submits that the learned court had failed to take into consideration the certificates given by the panchayat authorities, identifying the petitioner as one of the beneficiaries of the Pradhan Mantri Awas Yojana.

Mr. Roy further submits that the petitioner's possession over a portion of the suit property, is not in dispute and the construction, if allowed, would not deprive the plaintiffs in any way. The suit is for declaration of 1/6th share of the plaintiffs held in joint possession with the defendants. As yet, there is no prayer for partition.

Mr. Bhattacharya, learned advocate appearing on behalf of the opposite parties/plaintiffs submits that although the petitioner has contended that he was in possession of the area measuring 42 feet x 30 feet, such measurement does not appear in the report of the local inspection filed in court.

According to Mr. Bhattacharya, the measurement has been mentioned at internal page 3 at serial No.2 of the report. It is further submitted that the application was filed in anticipation of receipt of funds, although there is nothing on record to show that the petitioner has been listed as a beneficiary under the Pradhan Mantri Awas Yojana.

Having heard the rival contentions of the parties, this court finds that this is suit for declaration of joint possession of the plaintiffs with the defendant, having 1/6th share.

In the said suit, an order of status quo with regard to possession was passed by the learned court. In such a suit, local inspection was held. Admittedly, possession of the petitioner in a portion of the property is not disputed and it has been admitted in the report of the local inspection.

The petitioner prayed for permission to construct a building under the Pradhan Mantri Awas Yojana, a housing scheme floated by the central government for providing funds to those homeless persons, living below the poverty line.

The learned court was of the view that although the said report of the local inspection reflected that the dwelling area of the petitioner was in a dilapidated condition, the permission to construct thereon, could not be allowed.

This is a suit for declaration of shares of the plaintiffs jointly with the defendant. In such suit, status quo with regard to possession was passed. In my opinion, there cannot be any impediment in allowing the petitioner to raise construction within the area in his possession, to be identified by the

learned advocate commissioner, who held the commission. Cost to be paid by the petitioner.

The construction will be made in accordance with the scheme and the sketch map/drawing/model plan, to be supplied by the authorities under the said scheme. The construction will be subject to the final result of the suit and subject to the court being satisfied with the enlistment of the petitioner as one of the beneficiaries in the final list. In case it is found that the petitioner is not a beneficiary under the scheme, the order impugned will revive. The construction will be subject to the result of the suit.

The order of the learned court below is modified to the above extent.

The revisional application stands disposed of accordingly.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)