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13.12.2024
Ct. No. 11
rrc

MAT 2111 of 2024
with
IA No. CAN 1 of 2024
(Bijon Mondal & Ors. Vs. Balaram Chandra
Biswas & Ors.)

Mr. Ibrahim Sheikh
Md. Mainudin Khan
.... For the appellants

Mr. Chandi Charan De, AGP
Mr. Anirban Sarkar
.... For the State respondents

Mr. Partha Pratim Roy
Mr. Sarbananda Sanyal
.... For the writ petitioners/ respondents

The challenge in this appeal pertains to the order dated September 24, 2024, passed by the learned Single Bench in WPA 21759 of 2024. In this order, the respondent no. 4 was directed to conduct a physical inspection of the alleged illegal structure and encroachment on the PWD land. Furthermore, the respondent no. 4 was directed to afford an opportunity of hearing to both the writ petitioner/respondent as well as the private respondents/appellants herein, and dispose of the representation of the writ petitioner dated August 6, 2024 by issuing a reasoned order.

Additionally, the learned Court directed that, in the event the reasoned order confirms the existence of the illegal and unauthorized structure and the encroachment, as alleged in the

representation, respondent no. 4, along with other appropriate State authorities, shall take the necessary and consequential steps to give immediate effect to the said reasoned order within a specified time frame.

Being aggrieved by that order, the present appeal has been preferred by the private respondent nos. 7 to 9 in the writ petition/appeal herein.

Mr. Sheikh, learned advocate appearing in support of the appeal, submits that the writ petitioner/respondent moved the writ petition while suppressing material facts, namely, that with regard to the same piece of land, L.R. Plot No. 5508/5856, a civil suit being Title Suit No. 250 of 2019 was instituted by the writ petitioner/respondent against appellant nos. 1 and 2 herein, impleading the other co-sharers as parties thereto. He further informs that the said suit was dismissed, and that, challenging the judgment and decree passed in Title Suit No. 250 of 2019, an appeal *vide*. Title Appeal No. 68 of 2024 has already been filed by the writ petitioner/appellant, which is still pending final adjudication. He asserts that since the writ petitioner/respondent obtained the impugned order by suppressing those material facts, the order cannot be allowed to stand and, as such, is liable to be set aside.

Mr. Sanyal, learned advocate representing the writ petitioner/respondent herein, counters the submission of Mr. Sheikh, arguing that those facts cannot be considered material facts as the plot of land is entirely private property of the petitioner, having no connection with the issue involved in the writ petition or the instant appeal. He alleges that the appellants have illegally encroached upon a PWD land located just in front

of the petitioner's property, where they have made a pucca construction, thereby obstructing the petitioner's ingress and egress. As such, the petitioner was compelled to submit a representation dated August 6, 2024, before the competent authority. However, since despite the receipt of the representation, no effective steps have been taken, the petitioner was constrained to invoke the writ jurisdiction of this Court by filing the writ petition.

Mr. De, learned Additional Government Pleader representing the State respondents, submits that the appellants have allegedly encroached upon Government land, and, accordingly, an enquiry needs to be undertaken. He contends that the learned Single Judge has categorically directed respondent no. 4 to conduct an inspection of the land belonging to the PWD. He argues that the State has every right to carry out a physical inspection of the PWD land under Section 10 of the West Bengal Highways Act, 1964, and to take appropriate steps in accordance with the legislative mandate if it is found that the PWD land, or any part thereof, has been illegally encroached upon by any private individual. He further submits that the learned Single Bench has directed that an opportunity of hearing be provided to the appellants and the private respondents before passing a reasoned order and before giving effect to that order. According to him, in the present case, the appellants cannot claim to have any grievance or cause of action to file the appeal, and, as such, the appeal is liable to be dismissed.

Heard the learned advocates appearing for the respective parties. Perused the materials on records placed before us.

Though, *prima facie*, we are of the view that the writ petitioner/respondent herein should have disclosed the facts regarding the institution and disposal of the suit, as well as the pendency of the appeal before the learned Court below, we find that an allegation of illegal encroachment on PWD land (i.e., State-owned land), which has resulted in obstruction to ingress and egress to the property of a private individual, has been brought to the notice of the Court. In light of this, we are of the view that the inspection, as directed by the learned Single Judge, needs to be conducted, and subsequent follow-up actions must be taken. We also note that the learned Single Bench directed the concerned respondent to afford an opportunity for hearing to the appellants and the private respondents before passing a reasoned order and giving effect to it. Therefore, the appellants cannot have any grievance regarding the possibility of being deprived of an opportunity to defend themselves.

Accordingly, we direct respondent no. 4 to conduct an enquiry and take the subsequent follow-up steps as directed by the learned Single Judge in the order impugned in this appeal. We modify the order only to the extent that, before taking a reasoned decision, respondent no. 4 shall consider the pleadings of the parties in the suit as well as in the pending appeal. Additionally, respondent no. 4 shall decide whether the judgment and decree passed in the suit, and the pendency of the appeal before the learned trial court, may have any bearing on its reasoned decision.

We have been informed that no notice has yet been issued by respondent no. 4 to the appellants and the private respondents. In view of this, we extend the time fixed by the learned Single

Judge in the order under challenge in this writ petition and direct that the entire exercise be completed within six (6) months from the date of receipt of a copy of this order. The private respondent herein is directed to communicate this order, along with a server copy thereof, to respondent no. 4 positively within one week from the date.

With these observations and directions, the appeal as well as the connected application is disposed of.

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

All parties shall act on the service copies of this order duly downloaded from the official website of this Court.

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