

08. 06.02.2024
Court No.6
(Tanmoy)

MAT 2343 of 2023
Molla Nuruddin Ahamad
-Versus-
State of West Bengal & Ors.

With
IA No: CAN/2/2023

Mr. Raghunath Chakraborty, Adv.,
Mr. Mahaboob Ahamad, Adv.,
Ms. Arpita Patra, Adv.

...for the appellant.

Mr. Suman Sengupta, Adv.,
Ms. Amrita Panja Moulick, Adv.,
Mr. Sanatan Panja, Adv.

...for the State.

Ms. Salma S. Shah, Adv.

...for the respondent no.8/*Pradhan*.

Mr. Shamit Sanyal, Adv.,
Mr. Sani Hossain, Adv.

...for the respondent nos. 11-13.

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

The appellant's writ petition being WPA 13732 of 2023, was disposed of by a learned Judge of this Court by the impugned judgment and order dated September 19, 2023.

The appellant's grievance is that a public drain has been constructed by the State Authorities/*Panchayat* encroaching upon land belonging to the appellant. It is not necessary for us to get into the history of the matter. There was an earlier round of litigation pursuant to which the District Magistrate, Hooghly, passed an order dated April 28, 2023. In the present round of litigation,

the appellant approached the learned Single Judge contending that L.R. plot no. 444 is Government land and the public drain can be constructed utilizing such land. The writ petitioner's plot may be spared. The further contention was that the construction of the drain over the writ petitioner's land should be stopped and any such construction made, should be removed.

The learned Judge took on record a report of the concerned Revenue Officer which was filed before the concerned Block Land and Land Reforms Officer (BL&LRO), mentioning that on enquiry it was found that there was extension of the drain adjacent to L.R. plot no. 444 by encroaching upon an area of approximately 250 sq.ft. of L.R. plot no. 420 corresponding to R.S. plot no.358. The appellant claims to be the owner of L.R. plot nos. 419 and 420.

From the report of the Revenue Officer, the learned Judge came to the conclusion that the writ petitioner's allegation of encroachment appears to be true. The learned Judge disposed of the writ petition with the following directions:-

"In view of the above, the Block Land & Land Reforms Officer is directed to take steps for payment of compensation on account of illegal encroachment of the private land or in the contrary to remove the encroachment so that the owner may enjoy the land as per his wish and desire. The compensation be paid in accordance with the provisions of law after giving reasonable opportunity of hearing to all the necessary parties.

The authority may also take steps for acquiring the land in question upon payment of requisite charges.

Steps shall be taken in the matter at the earliest but positively within a period of twelve weeks from the date of communication of this order.”

Being aggrieved, the writ petitioner has come up by way of this appeal.

The short point urged by the appellant is that the recording in the Revenue Officer's report that the area of the appellant's land encroached upon for construction of the public drain is approximately 250 sq.ft., is incorrect. In fact, approximately 2,500 sq.ft. of the appellant's land has been encroached upon.

The contention of the appellant is strongly disputed by learned Advocate for the State, learned Advocate for the private respondents as also learned Advocate for the concerned *Panchayat*. According to the State, pursuant to the order dated April 28, 2023, passed by the District Magistrate, Hooghly, a joint inspection was held in the presence of all concerned parties including the appellant and the private respondents herein. No encroachment upon the appellant's land was found. This is of course disputed by learned Advocate for the appellant.

Be that as it may, we find that a representation dated May 12, 2023, has been made by the appellant to the District Magistrate, Hooghly, ventilating his grievance regarding construction of the public drain by encroaching upon his land. This representation was perhaps not drawn to the attention of the learned Single Judge. The learned Judge proceeded to direct the

concerned Authorities to pay compensation to the writ petitioner for 250 sq.ft. of land mentioned in the Revenue Officer's report. Whether or not such recording was correct, did not fall for determination by the learned Single Judge.

Accordingly, while we completely agree with the learned Judge's direction that due compensation has to be paid to the appellant, if his land has been encroached upon, the fact-finding measure of whether there has been encroachment at all and if so, to what extent, will be better carried out by the District Magistrate with the aid and assistance of the concerned officers in the administration.

Accordingly, we direct the respondent no.2 herein being the District Magistrate, Hooghly, to dispose of the representation dated May 12, 2023, made by the appellant herein to the said respondent, in accordance with law, by passing a reasoned order, within a period of three months from the date of communication of this order to the respondent no.2, after giving an opportunity of hearing to all concerned parties including the appellant, the private respondents herein and the concerned *Panchayat*. In particular, the District Magistrate, Hooghly, shall consider and ascertain by causing requisite local inspection and measurement, whether the land of the appellant has been encroached upon for construction of the public drain in question

and if so, to what extent, i.e. the area of the land so encroached upon. The measurement, that the respondent no.2 shall cause to be made, shall be upon notice to the concerned parties. If encroachment is found, the District Magistrate shall also consider the possibility or feasibility of shifting the drain to some alternative plot of land from the land of the appellant. However, if the same is not possible for any reason, then due compensation has to be paid to the appellant for utilization of his land as indicated by the learned Single Judge.

We clarify that we have not gone into the merits of the matter. The District Magistrate shall take an informed decision in accordance with law on the aforesaid representation of the appellant.

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

The appeal being MAT 2343 of 2023 and the connected application being IA No: CAN/2/2023 are disposed of.

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

(Arijit Banerjee, J.)

(M.V. Muralidaran, J.)