

02.01.2024
Item No.03
Court No.6.
S. De

M.A.T. 2412 of 2023
With
I.A. No. CAN/1/2023

Ashis Kamila.
Vs
The State of West Bengal & Ors.

Mr. Amit Baran Dash,
Ms. Ankana Sarkar,
...for the appellant.
Ms. Sima Adhikari,
Ms. Kakoli Naskar,
...for the State.
Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. Rudranil Das,
...for the respondent nos. 9 & 10.

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

A judgment and order dated December 6, 2023, whereby the appellant's writ petition being WPA 22321 of 2023, was disposed of by a learned Judge of this Court, is under challenge in this appeal at the instance of the writ petitioner.

The writ petitioner approached the learned Single Judge with the grievance that the private respondents have made illegal and unauthorized construction. The learned Judge noted that pursuant to a complaint lodged before the Panchayat, a hearing

had been conducted but no final decision could be arrived at by the Pradhan. The learned Judge concluded that the dispute between the parties is civil in nature regarding right, title and possession of a plot of land. The learned Judge disposed of the writ petition with the following observations.

“Upon hearing the parties and on perusal of the materials on record, it appears that the Proadhan of the Gram Panchayat has rightly not entertained the prayer of the petitioner and relegated the parties to the competent court. It will not be proper to direct the Gram Panchayat to interfere and decide any civil dispute in between the parties. It will be open for the parties to approach the appropriate civil forum for relief.”

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

From the affidavit-of-service filed in Court, we find that the Prodhan has received notice of this proceeding. However, the Panchayat or the Prodhan is not represented before us.

Learned advocate for the appellant says that in the order dated July 14, 2023 (page 52 of stay petition), the Prodhan has clearly come to a finding that the private respondents have raised an unauthorized construction. However, the Prodhan has not taken any steps in spite of such finding.

Learned advocate for the private respondents says that there is no such finding in that order of the Prodhan. Because of the breach of peace created by the members of the rival groups, the Prodhan's men and people could not ascertain the actual state of affairs.

We have gone through the order dated July 14, 2023. There does not appear to be any clear finding of any unauthorized construction.

Learned advocate for the private respondents draws our attention to the petition under Section 144(2) of the Code of Criminal Procedure filed by the appellant herein in the Court of Sub-Divisional Executive Magistrate at Contai. It is *inter alia* stated in such petition that the private respondents have encroached upon the land of the appellant and are making unauthorized construction.

It, therefore, appears that there is a title dispute between the appellant and the private respondents. The Panchayat cannot decide such dispute. To that extent, the learned Single Judge was perfectly justified in relegating the appellant/writ petitioner to a civil forum.

However, no construction can be raised by any citizen without obtaining prior permission from the sanctioning authority. If in the present case, the private respondents have made any construction

requiring permission of the Panchayat but without obtaining such permission, then such construction cannot be allowed to stand.

Accordingly, we direct the Prodhan of the concerned Panchayat to carry out necessary enquiry, grant an opportunity of hearing to the appellant and the private respondents or their authorized representative and come to a finding as to whether or not the private respondents have raised unauthorized construction. If the Prodhan finds that the private respondents have made illegal construction, he will take necessary steps to deal with such illegal construction in accordance with law. The Prodhan shall complete the entire exercise within twelve weeks from the date of communication of this order to him. We clarify that the Prodhan will not enter into any title dispute between the parties.

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

With the aforesaid modification of the impugned order, the appeal being MAT 2412 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2023.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as

expeditiously as possible on compliance with all the necessary formalities.

(Prasenjit Biswas, J.)

(Arijit Banerjee, J.)