

17.02.2025
Sl. No.7(DL)
Ct. No.39
srm

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. No. 11230 of 2024

Sk. Rakibul Haque

Versus

The State of West Bengal & Ors.

Mr. Saikat Chatterjee,
Mr. Isteyak Ahmed,
Mr. Partha Pratim Sinha

...for the Petitioner.

Mr. Lalit Mohan Mahata, ld. AGP
Mr. Prasanta Behari Mahata

...for the State-respondents.

Ms. Papma Dey (Dhabal),
Syed Murshid Alam

...for the Respondent Nos.8 to 10.

Affidavit of service filed on behalf of the petitioner
is taken on record.

This writ petition has been filed for demolition of
illegal construction undertaken by private respondents
and restraining them from making any further illegal
construction.

On the prayer of the learned Advocate for the
petitioner, leave is granted to file supplementary
affidavit.

Supplementary affidavit filed by the petitioner is
taken on record.

The petitioner's case in brief is that the
petitioner's father namely Sk. Mahiuddin had title over

the property recorded in J.L. No.04, R.S. Dag Nos.361, 362, 363, 368, 431, 3432, 433, 434, 435, P.S. Shyampur and, therefore, was impleaded as defendant No.1 in Title suit No.2 of 1997 filed before the learned Civil Judge (Junior Division), Uluberia, Howrah. In the said proceedings order of *status quo* was passed as regards the possession and enjoyment as well as nature and character of the suit property till disposal of the suit. The private respondent Nos.8 to 10 on being assured by the plaintiff have illegally occupied a portion of the aforesaid land and have constructed three separate *pucca* houses without any sanction from *Nakole Gram Panchayat*, respondent No.2. The petitioner made representation before the Pradhan of *Nakole Gram Panchayat*, respondent No.2 as well as to the Officer-in-Charge, Shyampur PS on 1st April, 2024 and 3rd November, 2024 respectively. However, no steps have been taken. The petitioner approached the civil court by filing an application under Order XXXIX Rule 7 read with Section 151 of the Code of Civil Procedure along with applications for addition of party and put up petition. However, the same has not been heard as yet. Hence this writ petition.

Mr. Saikat Chatterjee, learned Advocate appearing for the petitioner submits that the private respondent Nos.8 to 10 are carrying on illegal construction taking advantage of the pendency of the

applications filed before the civil court and not heard. Such illegal construction is being undertaken by the private respondents on tacit consent and/or inaction of respondent no.2, Pradhan of *Nakole Gram Panchayat*. He seeks for appropriate order for demolition of the illegal construction and for restraining the private respondents from making any further illegal construction.

Ms. Pampa Dey (Dhabal), learned Advocate appearing for the respondent Nos.8 to 10 submits that the private respondents are making repairs in the property-in-question which is not at all a fresh construction. Referring to the order passed in civil suit, she submits that all the petitions filed by the petitioner are scheduled to be heard on 26th February, 2025. She files copy of the orders passed in Title Suit.

Mr. Lalit Mohan Mahata, learned Additional Government Pleader appearing for the State-respondents submits that the entire dispute is civil in nature and hence the writ petition is not at all maintainable.

It is not in dispute that a civil suit is pending before the learned Civil Judge (Junior Division), 2nd Court, Uluberia being Title Suit No.2032 of 2014 (old Title Suit No.148 of 1976) between the parties. Admittedly, the petitioner has moved the civil court for redressal of his grievance by filing application under

Order XXXIX Rule 7 of the Code of Civil Procedure etc. The order sheet placed before this Court shows that the applications pending are scheduled to be heard by the civil court on 26th February, 2025. The entire dispute is civil in nature.

In the aforesaid backdrop, the writ petition being **WPA 11230 of 2024** is disposed of without any order. However, it is left open to the petitioner to approach the civil court for redressal of his grievance, in accordance with law.

Interim order, if any, stands vacated.

All connected applications, if any, stand disposed of.

There shall be no order as to costs.

Urgent Photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)