

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 12414 of 2023

Aswini Kumar Maity

-Vs-

The State of West Bengal & Ors.

For the Petitioner	: Ms. Malayasree Maity
For the State	: Mr. Ranjit Rajak
For the Respondent Nos. 2 to 5	: Mr. Gopal Chandra Das Ms. Ananya Das
For the Respondent Nos.6 and 7	: Mr. Rudranil De
Judgment on	: 23.04.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner sought a writ in the nature of mandamus praying for directions to the respondent authorities to consider the representation/objections dated 09.03.2023 and 11.05.2023 against the unauthorized construction by the private respondents on the disputed plot. The petitioner also prayed the Court to command respondents no 3 and 4 to pursue the stop work notice dated 27.03.2023, directing steps to demolish the unauthorized construction by cancelling the sanctioned plan. Additionally, the petitioner requested to issue an ad-interim stay of order on

further constructions as per the stop work notice dated 27.02.2023, until the cancellation proceedings were disposed of and further cancellation proceedings were initiated.

2. The petitioner precisely stated to have obtained a decree for specific performance of a contract for the execution of a sale deed through institution of TS. No 86 of 1990 before the 2nd Court of Munsif, by entering into an agreement with the original owner Pares Chandra Das, heir of Late Kanailal Das, for the purchase of a property measuring 2.2 decimals in RS No. 50 (LR Plot No. 50), RS Khatian No. 686 (LR Khatian No. 153), Mouza Parbatipur, Tamluk, District Purba Medinipur. During the pendency of the suit, the original owner sold the aforementioned land, to the purchasers, Amarnath Dey and Monika Dey who filed T.S. No. 91 of on 2007 (T.S.-20 of 1995), which was dismissed on contest. An appeal, which was preferred against the Judgment and Decree being T.A. 28 of 2015 was also dismissed for default. Consequently, the private respondents and their vendors had no title over the plot. On 06.02.2023, the private respondents initiated construction on the plot and the petitioner raised objections against the same at the municipality. The petitioner had forwarded representations on 15.02.2023 and 24.02.2023, and consequently the municipality issued a stop work notice on 27.02.2023. Despite the stop work notice, the private respondents continued the aforesaid construction.

3. Subsequently, the petitioner represented on 06.03.2023, 09.03.2023, and 12.03.2023, requesting the cancellation of the construction plan and demolition of the construction.
4. The Learned Advocate representing the petitioner argued that despite several representations submitted against the private respondent concerning their illegal construction, the municipality failed to take any action. Initially, the Chairman issued a stop work notice and called for a hearing but no such hearing was conducted and the stop work notice was not enforced. The petitioner further claimed that the private respondent fraudulently obtained a construction plan from the municipality by concealing a civil court decree that denied their title to the property. It was further claimed that the municipal authorities had acted illegally and with malafide intention by not initiating proceedings under the West Bengal Municipal Act, 1993. It was further argued that the petitioner held a superior title to the property as the private respondent had suppressed the fact that the title suit and appeal had been dismissed while applying for the approval of the building plan. The suppression of these material facts rendered the sanctioning of the building plan invalid.
5. The Learned Advocates representing the Respondent Nos. 2,3,4 and 5 argued that the municipality issued a notice to the parties on 27.02.2023 for a hearing directing the parties to appear before the Chairman along with the relevant documents. During the time of the hearing, it was observed that the private respondent possessed a valid sanction along with all relevant

documents, thus the municipality had no authority to cancel the plan or take any action other than withdrawing the stop work notice. The respondents claimed that a valid building sanction including a site plan for a three-storied residential building was issued in favour of the private respondents by the municipality on 17.11.2021. They further claimed that the private respondents had submitted all relevant documents required under Section 203 of the West Bengal Municipal Act, 1993, and that the sanction complied with Rule 4(3) and 4(4) of the West Bengal Municipal (Building Rules), 2007. Additional documents such as the registered sale deed, land porcha, tax receipts, and holding tax receipts were also submitted by the private respondents at the time of the submission of the building plan.

6. The Learned Advocate representing Respondents no 6 and 7 argued that the Writ Petition was not maintainable as the subject matter and issue of the Writ Petition did not fall under the jurisdiction of the Writ Court, given that the decree had not been executed. They further contended that the matter was purely civil in nature with no violation of any legal or fundamental rights of the writ petitioner, making the petition premature. The respondents claimed they had not constructed any illegal or unauthorized construction. On the contrary, the building, part of which had already been constructed, was accomplished in accordance to a duly sanctioned plan obtained from the authority and therefore there was no illegality as alleged by the writ petitioner. The learned advocate representing the said respondents further

argued that upon receiving the notice from the municipal authority, they immediately discontinued the construction work. Therefore, the allegation of continuing work after receiving the notice dated 27th February 2023 from the Chairman was baseless and vague.

7. The petitioner/plaintiff had filed a suit being TS-86 of 1990 at the Second Court of Munsiff at Tamluk vide Order No.11 dated 28.06.1991. The aforesaid suit was considered for ex parte hearing in the presence of the petitioner/plaintiff who was examined as PW-1 and certain documents were marked as Exhibit-1, 2, 2/A and 2/B on behalf of the petitioner/plaintiff. The petitioner/plaintiff sought for a specific performance of contract for sale on the basis of a '*bainanama*' executed on 21.09.1990, on the basis of a contract between the petitioner/plaintiff and the defendant the owner of the disputed property therein, against payment of Rs.7,000/- by the petitioner/plaintiff to the defendant as an advance of the consideration. The remaining consideration amount to be paid within 31.10.1990 by the petitioner/plaintiff and on receipt of the same, the defendant would execute a Deed of Sale in respect of the disputed property in favour of the petitioner/plaintiff. The petitioner/plaintiff intended on several occasions to perform his part of the contract and attended the Office of the Sub-Registrar with the residual consideration being denied by the defendants to execute the Deed of Sale despite notice being sent to the defendant with a request to execute the Deed of Sale on accepting the balance of the consideration against such execution.

8. The petitioner/plaintiff also published a public notice in a local daily newspaper on 19.10.1990 stating his intention to purchase the disputed property on the basis of the 'bainanama' as aforesaid. The refusal on the part of the defendant to execute the Deed of Sale as aforesaid prompted the petitioner to file the suit for specific performance of the contract as aforesaid.
9. The Learned Trial Court as aforesaid after considering the materials on record, inter alia, observed as follows:-

"Perused evidence of the plaintiff as PW-1. This is going to support the case of the plaintiff.

Considered the document and also evidence on record I find that the plaintiff's claim appears to be true and he is entitled to a decree as prayed for.

Court fees paid is correct. Accordingly the suit be and the same is decreed ex parte with costs. The plaintiff is entitled to get specific performance of contract for sale in respect of the ka sch. Property entered into by himself and the defendant by kha sch. Bainanama. The defendants are directed to execute the sale deed in respect of the ka sch. Property in favour of the plaintiff on receiving balance of consideration money, in default, such a deed would be executed through court. The plaintiff is directed to deposit balance consideration money in the court. The defendants at liberty to withdraw the same, if so deposited by the plaintiff from court only on execution of a deed of sale in respect of the disputed property in favour of the plaintiff."

10. The disputed property was however sold to Amarnath Dey and Monika Dey by the original owners of the property during the pendency of Title Suit No.86 of 1990 as aforesaid. The aforesaid purchasers filed a Title Suit being

No.91 of 2007 against the present petitioner/plaintiff, inter alia, stating that the decree passed in Title Suit No.86 of 1990 as aforesaid was not binding upon them.

11. The Civil Judge, Junior Division, Tamluk, dismissed the title suit on context being Title Suit No.91 of 2007 since the suit was not maintainable. A Title Appeal being No.28 of 2015 was preferred against the order dated 11.03.2015 passed by the Civil Judge, Junior Division, Additional Court, Tamluk, in Title Suit No.91 of 2007 which was dismissed for default vide Order No.42 dated 17.05.2002 passed by the Court of the Learned Additional District Judge, Fast Tract Court-II, Tamluk.
12. The Learned Advocate representing the petitioner/plaintiff argued that the petitioners held a superior title to the disputed property by virtue of the order of specific performance of the contract granted in his favour in Title Suit No.86 of 1990 as aforesaid. The Title Suit No.91 of 2007 and the Title Appeal No.28 of 2015 had been dismissed thereby reassuring and legally sanctifying the right of the petitioner to the disputed property in supersession of the sale of the said property in favour of the private respondents.
13. Non-compliance of the Court's Order by the original owner of the disputed property in TS-86 of 1990 heard ex party related to a dispute between two parties to a contract concerning their transfer of title and legal entitlement to the same which fell within the jurisdiction of a Civil Court and the Writ Court should not interfere into the adjudication of the same.

14. The claim of the petitioner/plaintiff to the property on the basis of the Order passed in the title suit in absence of execution of a Deed of Sale did not sanction any legal right in his favour to claim ownership, dominion or possession unto the said property.
15. It is not possible for the municipal authorities to check the veracity of each and every title deed whether placed before the same for sanctioning of the plan for construction and pendency of any legal proceeding concerning the same unless brought to its notice. Nonetheless 'Stop Work' notice was issued at the representation of the petitioner/plaintiff initially. Subsequently the municipality did not detect any variations, irregularities or abnormalities in the documents on hearing and the sanctioned plan was issued for construction of the building on the disputed land.
16. The petitioner/plaintiff at this stage cannot claim its right over the disputed property without valid execution of a sale deed as aforesaid through a Writ Court precluded to venture beyond its jurisdiction, the dispute being exclusively contractual in nature between two individuals to be determined by a Civil Court of competent jurisdiction if at all there had been non-compliance of Civil Court's Order as aforesaid. The petitioner cannot seek any relief since the respondent/municipal authorities has not detected any condition or violation preventing it to sanction a valid plan for construction in favour of the private respondent.
17. In view of the above discussions, the instant writ petition being WPA 12414 of 2023 is dismissed.

18. There is no order as to costs.

19. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)