

16.05.2025.
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Ct.No.7.
as

WPA 22575 of 2022
with
CAN 1 of 2025

St. Joseph's High School & Ors.
Vs.
The State of West Bengal & Ors.

Dr. R. P. Motilal,
Mr. Subham Banerjee,
Mr. Aayush Choumal.
...for the Petitioners.

Mr. Gausul Alam,
Mr. Ranjit Rajak.
...for the State.

Mr. Tuhin Subhra Raut,
Mr. Priyabrata Ghosh.
...for the Respondent Nos.8 & 9.

1. A long-pending civil legal battle between St. Joseph High School and the private respondents, Nos. 8 and 9, the latter having represented himself as the attorney for respondent No. 9, has now entered the writ jurisdiction of this Court through the present writ petition, which challenges the legality of an order dated 10th May 2022, passed by the Asansol Municipal Corporation, requesting the Sub-Divisional Officer, Asansol, to remove the encroachment upon land by St. Joseph's High School (hereinafter referred to as the school) and its Secretary and Headmaster, the petitioners herein.

2. Briefly stated, the key facts that need to be outlined for the effective adjudication of the writ petition are that the petitioners allege that the school is the absolute owner of R.S. Plot No. 1055, corresponding to L.R. Plot No. 1135, comprising an area of 1.165 acres in Mouza Asansol,

together with the building standing thereon, which falls within the territorial jurisdiction of Asansol Municipality.

3. However, in contrast, respondent No. 9 also claims to be the absolute owner of the land. These rival claims have given rise to two civil suits: one instituted by the school authority and the other by the private respondent No. 9, Mr. Majumder. The suit filed by the school authority was initially registered as Title Suit No. 06 of 2008, which was later re-numbered as Title Suit No. 9 of 2010. In that suit, Mr. Majumder was made a party.

4. The record reveals that the suit was decreed by the Court on contest on 27th July 2011, declaring the school's right, title, and interest in the property. The Court further granted a permanent injunction, restraining the defendant, Mr. Majumder, and two others, along with their men and agents, from creating any disturbance to the school's peaceful possession of the suit property.

5. As noted earlier, Mr. Majumder also filed a suit, which was registered as Title Suit No. 40 of 1995. However, in that suit, the school authority was not made a party. The suit was decreed in favor of Mr. Majumder, declaring his right, title, and interest over the property. After obtaining the decree in Title Suit No. 40 of 1995, Mr. Majumder approached the competent authority of the Municipality with a representation, requesting the authority to take appropriate action to remove the school from the disputed land.

6. Subsequently, alleging inaction on the part of the concerned Corporation in removing the school from the

land, a writ petition, WP 20762 (W) of 2010, was filed. The writ petition was disposed of with a direction to the competent authority of the Corporation to pass a reasoned order. In compliance with this direction, a reasoned order dated 10th May 2022 was passed, which is now under challenge in the present writ petition.

7. The record further reveals that respondent No. 8, claiming to be the lawful attorney of Mr. Majumder, approached this Court by filing WP 1488 (W) of 2015. However, noting that the Asansol Municipal Corporation had already passed a reasoned order, a Co-ordinate Bench of this Court refused to entertain this writ petition.

8. Mr. Banerjee, learned advocate representing the petitioners, submits that in the suit instituted by the school authority, Mr. Majumder was made a party. As a result, the decree passed in that suit is binding on Mr. Majumder. However, in the suit instituted by Mr. Majumder, the school authority was not impleaded as a party. Therefore, the decree passed in Mr. Majumder's suit does not have a binding effect on the school authority. He submits that, despite this, the Secretary of the Corporation, without considering this fact, directed the Sub-Divisional Officer, Asansol, through the order under challenge, to remove the school from its possession of the land.

9. Mr. Raut, learned advocate representing respondent Nos. 8 and 9, vehemently opposes the contention advanced by Mr. Banerjee. He submits that the suit instituted by the school authority was decided ex-parte. He asserts that Mr. Majumder is in possession of the suit property and that the

school authority is illegally obstructing Mr. Majumder's peaceful possession of the property.

10. Heard the learned advocates appearing for the respective parties and perused the materials on record.

11. Admittedly, the dispute involved in this writ petition is predominantly civil in nature and has a civil character. However, as noted previously, Mr. Majumder was a party to the suit instituted by the school authority. Therefore, the decree passed in that suit, regardless of whether it was passed ex-parte or after contest, would be binding upon Mr. Majumder.

12. I have been informed that an appeal was filed challenging the decree passed in Title Suit No. 9 of 2010, instituted by the school authority. However, the appeal was decided against Mr. Majumder and no second appeal has been preferred challenging the decision of the first appellate Court. Therefore, the decree passed in the suit instituted by the school authority has attained finality and the decree passed in the suit instituted by the respondent no. 9 has no binding effect upon the school.

13. As noted previously, in the suit filed by Mr. Majumder, the school authority was not a party. However, without considering the fact that a decree had been passed by a competent court of law in another suit, which was binding on both parties, the Secretary of the Asansol Municipal Corporation issued an order dated 10th May, 2022, directing the Sub-Divisional Officer to remove the school authority from possession of the land.

14. Since this order was passed without considering the decree issued by a competent Court of Law in a suit involving both parties, the order dated 10th May, 2022, passed by the Secretary of the Corporation, cannot be sustained and is accordingly set aside.

15. With this observation and order, the writ petition and the connected application are disposed of.

16. There will be no order as to costs.

(Partha Sarathi Chatterjee, J.)