

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 1120 of 2024

With

IA No.: CAN 1 of 2024

With

IA No.: CAN 2 of 2024

Sri Sajit Krishnan Kutty & Ors.

Vs.

State of West Bengal & Ors.

With

WPA 22954 of 2024

Sri Sajit Krishnan Kutty & Ors.

Vs.

The State of West Bengal & Ors.

For the appellants

: Mr. Saptangsu Basu, Ld. Sr. Advocate

Mr. Ayan Banerjee, Advocate

Mr. Subhadip Biswas, Advocate

Ms. Deboshree Dhamali, Advocate

Ms. Dona Saha, Advocate

For the respondent nos.6 to 11

: Mr. Kallol Basu, Advocate

Mr. Soham Kumar Roy, Advocate

Mr. Rahul Kumar Singh, Advocate

Mr. Sk. Md. Wasim Akram, Advocate

For the South Dum Dum Municipality :Mr. Amales Roy, Ld. Sr. Advocate

Ms. Mousumi Bhowal, Advocate

Mr. Aman Gupta, Advocate

Heard & Judgment on

: January 21, 2025

DEBANGSU BASAK, J.:-

1. Appeal is directed against an order dated May 16, 2024 passed in WPA 9409 of 2024.
2. Appeal is at the behest of the writ petitioners.
3. By the impugned order, learned Single Judge refused to interfere with the order of demolition. Learned Single Judge, however, granted time to the appellants to demolish the dilapidated structure. Learned Single Judge allowed the sanctioned plan to be applied for and obtained, in accordance with law.
4. At the hearing of the appeal, learned Senior Advocate appearing for the appellants submits that, there were four civil suits between private parties. He points out that, initially, there was a civil suit being Title Suit No.130 of 1949. Thereafter, Title Suit No.372 of 2011 was filed by the appellant no.1 against the respondent no.6. Such Title Suit No.372 of 2011 was decreed ex parte on August 25, 2014, although, there are applications for setting aside of the ex parte decree, such application is yet to be allowed.
5. Learned Senior Advocate appearing for the appellants submits that, the respondent no.6 filed Title Suit No.23 of 2005 challenging a Deed of Gift. Appellant no.1 was also filed another Title Suit being Title Suit No.218 of 2024 claiming to be a representative of the deity, against the

- respondent no.6. Both the Title Suits being Title Suit No.23 of 2005 and Title Suit No.218 of 2024 are pending.
6. Learned Senior Advocate appearing for the appellants submits that, relief as prayed for by the appellants can be granted in view of the subsisting decree of Title Suit No.372 of 2011.
7. Learned Advocate appearing for the private respondents submits that, the judgment of the High Court in Title Suit No.130 of 1949 and the ex parte decree passed in Title Suit No.372 of 2011 are contradictory. He submits that, decree in Title Suit No.372 of 2011 could not be passed in view of the decree passed by the High Court in Title Suit No.130 of 1949. He points out the application under Order 9 Rule 13 of the Code of Civil Procedure is pending consideration in Title Suit No.372 of 2011.
8. Learned Advocate appearing for the respondent nos.6 to 11 submits that, in the event, the appellants are allowed to shift the inmates of the present dilapidated building to any other locale, such shifting will affect the right, title and interest of his clients. The appellants will not remove themselves from the unauthorized occupation of the property belonging to the respondent nos.6 to 11.
9. Municipality is represented.
10. Existence of a dilapidated structure at plot no.1230 is not disputed.
11. In such dilapidated structure, it is claimed that, students are lodged.

12. Plot No.1230 was made a subject matter of Title Suit No.130 of 1949.

Judgment of dismissal of the Title Suit was affirmed on appeal by the High Court. Title Suit No.130 of 1949, therefore, did not declare title of any of private parties in respect of plot no.1230.

13. Title Suit No.372 of 2011 is the second civil suit between the private parties where there subsists a decree *albeit* ex parte. The decree passed in Title Suit No.372 of 2011 declares title in favour of the appellant no.1, against respondent no.6, in respect of plot no.1230. There is also an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 along with an application for condonation of delay pending in respect of such ex parte decree. There are two other civil suits being Title Suit No.23 of 2005 and Title Suit No.218 of 2024 which are pending between the private parties.

14. As on date, title of the private parties in respect of plot no.1230 stands declared in Title Suit No.372 of 2011. Till such decree is reversed, private parties are bound by the decree. The other private respondents before us are claiming through the respondent no.6. They do not possess a better or higher right than the respondent no.6. Respondent no.6 is the defendant in Title Suit No.372 of 2011. Respondent no.6 is bound by the decree passed in Title Suit No.372 of 2011 till such time it is recalled or reversed by a process known to law.

15. There exists a mutation certificate issued by the Municipality which is at page 99 of CAN 1 of 2024. Record of rights on which the respondent

nos.6 to 11 seek to rely upon, however, does not advance the claim of respondent nos.6 to 11 with regard to the title of the immovable property concerned. It is trite law that record of rights is not a document of title. In any event, such record of rights in its body acknowledges the appellants before us to be occupiers of the building situate at plot no.1230.

16. As on date, we do not find that, there is any dispute with regard to title to plot no.1230 in view of the subsisting decree passed in Title Suit No.372 of 2011.

17. In such circumstances, the appellants should be permitted to shift the inmates of the damaged structure at plot no.1230. State will ensure that, no breach of peace occurs at the locale during such shifting.

18. Appellants will commence demolition of the damaged structure on plot no.1230 and the work of shifting of the inmates therefrom. State will ensure that, no breach of peace occurs at the locale when such demolition work is undertaken.

19. Appellants will apply before the Municipality for grant of sanction of the new structure. Municipality will consider such application for construction, in accordance with law without being influenced by any observations made by us in this order.

20. We clarify that, we are making the present arrangements for the purpose of disposal of the appeal. None of our observations will be construed to create any right, title, interest or equity in favour of any of

- the private parties, in respect of any of the property involved in the suit, in any manner whatsoever other than they already possess.
21. We clarify that, the Civil Courts will not be influenced by any of the observations made by us in this order with regard to the title to any of the immovable properties in any of the Title Suits of any of the private parties.
22. It is submitted on behalf of the appellants that, the appellants will require two weeks time to shift the inmates from the damaged structure. Such time as prayed for is granted. Shifting of the inmates must be completed within two weeks from date.
23. It is submitted on behalf of the appellants that the work of demolition will be completed within three weeks from date. We grant the appellants four weeks from date to complete the demolition. This four weeks will include the period of shifting.
24. Appellants will submit application for grant of sanction within five weeks from date with the Municipality. Municipality will consider and decide such application for grant of sanction within ten days from the date of receipt of the application.
25. Court is informed that the application for grant of sanction is made online at present.
26. Appellants will commence construction of the new structure within seven days from the date of grant of sanction of the building plan. It

will complete such construction within the statutory period of three years.

27. With the aforesaid observations **MAT 1120 of 2024** and **WPA 22954 of 2024** along with all connected applications are disposed of without any order as to costs.

(Debangsu Basak, J.)

28. I agree.

(Md. Shabbar Rashidi, J.)

(AD)