

09.07.2025
Sl. No.28
Ct.3/ tkm

W.P.A. 30881 of 2024

Kuntal Roy & Ors.
Vs
State of West Bengal & Ors.

Mr. Gangadhar Das
Mr. Tanmoy Chattopadhyay
...for the petitioners

Md. Nauroz Rahber
Muhammad Jawwad
Ms. Shahin Parveen
...for Dalkhola Municipality

Mr. Sonal Sinha
Mr. Jayanta Samanta
Mr. Nikhil Kr. Gupta
Ms. Mahuya Dutta Biswas
...for the State

Mr. Shamik Chataterjee
...for private respondent no. 9

1. The petitioners have preferred the present writ petition, being aggrieved by the alleged encroachment by the respondent municipality upon the petitioners' land situated at LR plot no. 26 in Mouza Dalkhola, JL no. 20 PS Dalkhola, Dist Uttar Dinajpur.
2. Learned counsel for the petitioners submits that their late father, during his lifetime, purchased 8.4 decimals of land at the above mentioned site by virtue of two separate registered sale deeds being No. 6134 and 6139 both dated 19.12.1995. Upon their father's demise, who died intestate on 10.3.1993, the said property devolved equally by

virtue of law of succession upon his four children including the petitioners as legal heirs. One of the legal heirs namely late Kausik Roy during his lifetime sold his undivided share of 2.1 decimal land in the said property to the Dalkhola municipality through a registered sale deed dated 1.2.2018.

3. It is the case of the petitioners that although the property remains undivided, the sale deed purportedly demarcated boundaries in respect of the 2.1 decimal share, which, according to the petitioners, has been illegally encroached upon by the respondent-municipality. It is further submitted by the petitioners that the municipality is carrying out unauthorized construction on the subject land and has also encroached upon the additional portion of the petitioners' undivided land.
4. Learned counsel for the petitioners further submits that they had instituted a partition suit being no. 164 of 2021, against the respondent municipality, which is currently pending adjudication before the competent civil court. He also submits that the petitioners have also claimed their stake for compensation in the present writ petition in terms of the fact that the

respondent municipality has encroached upon their lands.

5. Learned counsel for the respondent municipality submits that the total land in LR 26 in Mouza Dalkhola, JL no. 20 PS Dalkhola, Dist Uttar Dinajpur, was 8.4 decimal. He further submits that 6.4 decimals of land are still available with the petitioners. He also points out that the petitioners were aware of the unauthorized construction or encroachment in the year 2021 as mentioned in the writ petition. He also submits that the petitioners chose to remain silent and did not raise any grievance against the said construction for the past four years. He further submits that the respondent municipality has constructed a crematorium on the said plot which was sold by one of the legal heirs of late Phanibhusan Roy. It is also submitted that the present writ petition is devoid of merit and is not maintainable as the petitioners, on one hand, have sought restoration of possession of the land which has allegedly been encroached upon by the respondent municipality and on the other hand, have also sought compensation in view of taking over of the land of the petitioners, which amounts to taking inconsistent stands.

6. This Court has heard the submissions advanced on behalf of the parties and has perused the materials on record.
7. Perusal of the record reveals that the issues raised in the present writ petition pertain essentially to disputed question of facts, including the extent of ownership, title, possession and alleged encroachment over the undivided property of the petitioners. The issues are in the nature of civil dispute and fall squarely within the domain of civil court. The petitioners have already filed a separate remedy by instituting partition suit no. 164 of 2021 which is currently pending adjudication before the competent civil court.
8. This court further finds that mere involvement of a statutory authority, such as respondent municipality does not, in the facts and circumstances of the present case, render the dispute amenable to the writ jurisdiction under Article 226 of the Constitution. A writ remedy cannot be invoked to adjudicate a private civil dispute involving the issue of partition or possession of immovable property, especially where an efficacious alternative remedy has already been invoked by the petitioners before the competent civil court.

9. In view of above, the present writ petition is dismissed.

10. Let urgent Photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

(Gaurang Kanth, J.)