

OD-16

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/124/2024
With
WPO/240/2024
TAPAN BHUNIA & ANR.
VS
BISWANATH NANDI & ORS.

BEFORE :
THE HON'BLE JUSTICE DEBANGSU BASAK
And
THE HON'BLE JUSTICE MD. SHABBAR RASHIDI
Date : 14th January, 2025

Appearance :
Mr. Debabrata Saha Roy, Sr. Adv.
Mr. Neil Basu, Adv.
Mr. Sankha Biswas, Adv.
...for appellant
Mr. Srijan Nayak, Adv.
Mr. Swapan Kumar Debnnath, Adv.
...for KMC

The Court : The appeal is directed against an order dated April 24, 2024 passed in WPO 240 of 2024.

By the impugned order, the learned Single Judge held that Premises Nos.249 and 213, Rajdanga, Naba Pally are two distinct and separate premises. Learned Single Judge found that there cannot be any difficulty in identifying the two distinct plots of land. Learned Single Judge held that according to the registered deed, the writ petitioner is the owner of Premises no.249, while the private respondent in the writ court-the appellants before us-claimed

ownership in respect of Premises No.213. Learned Single Judge, therefore, directed grant of sanction of a building plan in respect of Premises no.249. Learned Single Judge also noted that in the event of any difficulty in identification of the subject plot, it will be open to the parties to approach the Civil Court for remedy.

Learned senior Advocate appearing for the appellants submits, that there are two civil suits filed by the appellant as against the writ petitioner being T.S. No.1999 of 2023, pending before the Learned First Additional Civil Judge (Junior Division) at Alipore, where, the appellants claimed ownership in respect of plot no.2624, corresponding to Premises no.213, Rajdanga, Naba Pally, and T.S. No.656 of 2024 in the court of the learned Civil Judge (Senior Division), 5th Court at Alipore against the writ petitioner, seeking declaration and injunction. Second suit was in respect of Dag no.2623, corresponding to an un-assessed KMC property. In the second suit, there subsists an order of injunction.

The Kolkata Municipal Corporation authorities are represented.

There are civil disputes between the private parties with regard to two plots of land being RS Dag no.2624 for which T.S. No.1999 of 2023 is pending and RS Dag No.2623 for which T.S. No.656 of 2024 is pending. In both the title suits, the appellants claimed ownership in respect of the two plots of land.

The private respondent/writ petitioner apparently claims ownership in respect of Premises no.213, Rajdanga, Naba Pally. The issue as to ownership of such subject plot of land is yet to be finally decided by the Civil Court. At least such issue was raised by the appellants before us in a duly instituted civil suit.

In view of the pending civil disputes, it would be inappropriate to intervene by way of a writ petition and direct grant of sanction of a building plan in respect of an immoveable property over which, the title of the writ petitioner seeking such permission is in dispute in a duly instituted civil suit filed prior to the institution of the writ petition.

In view of the discussion above, the impugned order dated April 24, 2024 is set aside.

APO/124/2024 along with all connected applications are disposed of without any order as to costs.

(DEBANGSU BASAK, J.)

(MD. SHABBAR RASHIDI, J.)