

04.02.2026
Item No.10+11
Ct. No.01
RP

MAT 112 of 2023
Jagatbandhu Bhandari & Anr.
VS
Tapasi Sardar & Ors.

With

MAT 224 of 2023
+
IA No.CAN 1 of 2026
Jagatbandhu Bhandari & Anr.
VS
Tapasi Sardar & Ors.

Mr. Sandip Das

....For Appellants

Mr. Ajay Debnath

Mrs. Swagata Datta

....For Respondent No.1

Mr. Swapan Kumar Dutta, Ld. GP

Mr. Nilotpal Chatterjee

Mr. Abhishek Chowdhury

....For State

PER, PARTHA SARATHI SEN, J.:

1. Since MAT 112 of 2023 and MAT 224 of 2023 are interconnected and since the orders impugned in the said two matters arises out of selfsame writ petition, we consider it appropriate to dispose of the present two appeals analogously.
2. At the time of hearing learned advocate appearing on behalf of the appellants, who are the private respondents in the writ petition, at

the very outset submits before this Court that the impugned order as passed in WPA 28092 of 2022 was passed in absence of the present appellants whereby and whereunder the learned Single Judge directed the Officer-in-Charge of the jurisdictional police station to ensure that the writ petitioner may not be disturbed in any way by the present appellants/private respondents at the time of construction of boundary wall.

- 3.** Drawing attention to the impugned order dated 31.01.2023 as passed in WPA 28092 of 2022 it is further submitted on behalf of the appellants/private respondents that after passing of the order dated 19.01.2023 the present appellants/private respondents approached the learned Single Bench by filing an interlocutory application, being IA No.CAN 1 of 2023, and while disposing of the said IA No.CAN 1 of 2023 the learned Single Bench noticed pendency of civil proceeding between the writ petitioner and the private respondents and, thus, came to a finding that the parties to

such writ petition may seek appropriate civil relief in the pending civil proceeding.

4. It is further submitted that in the later part of the impugned order dated 31.01.2023 the learned Single Bench further observed that the writ petitioner shall not in any way effect further construction of boundary wall with a further direction to maintain status quo as on date.
5. It is submitted on behalf of the appellants upon instruction that immediately after passing of the order dated 19.01.2023, which is impugned in MAT No.112 of 2023, the writ petitioner has effected construction of boundary wall causing serious prejudice to the right, title and interest of the present appellants/respondents, which is the subject matter of a civil proceeding, more specifically in a partition suit, which is now in the stage of appeal before a Division bench of this Court.
6. It is further submitted on behalf of the private respondents/appellants that in the event the impugned two orders dated 19.01.2023 and 31.01.2023 are permitted to remain intact that

would cause serious prejudice to the right, title and interest of the appellants/private respondents in the pending appeal before a coordinate Bench of this Court since the findings of the learned Single bench in the impugned two orders are mutually inconsistent.

7. In course of his submission Mr. Debenath, learned advocate for the writ petitioner (respondent herein), however, supports the impugned orders.
8. Mr. Chatterjee, learned advocate appearing for the State, however, submits that on perusal of the impugned two orders it would reveal that the dispute as has been ventilated by filing WPA 28092 of 2022 is confined to be a property dispute and for resolving such dispute appreciation of facts and evidence are required to be done, which a Writ Court is lacking. It is further submitted by Mr. Chatterjee that in the pending civil proceeding, either partition suit or appeal therefrom before a coordinate Bench of this Court, which is in seisin over the said appeal, the said Court can very well take care of

the disputed questions of fact and law while disposing of the said appeal.

9. Learned advocate appearing for the appellants/private respondents in reply submits before this Court that the appeal, being FAT 311 of 2023, is now pending before a coordinate Bench of this Court and the said appeal is now ready for hearing.

10. On careful consideration of entire materials as placed before us and after hearing the learned advocates for the contending parties, we find that by the impugned order dated 19.01.2023 the prayer of the writ petitioner was practically allowed by the learned Single Bench by directing the Officer-in-Charge of the jurisdictional police station to ensure that the private respondents therein must not obstruct the writ petitioner while construction of the boundary wall.

11. However, on perusal of the impugned order dated 31.01.2023 the selfsame Single Bench while disposing of CAN 1 of 2023 rightly noticed that the civil relief as has been sought for by the

parties to the said writ petition can be very well obtained in the pending civil proceeding and the fate of the boundary wall already constructed by the writ petitioner pursuant to the order dated 19.01.2023 shall abide by any direction that may be passed by any competent civil Court.

12. In the aforementioned factual scenario, we while disposing of the instant appeals grants liberty to the present appellants as well as the respondent/writ petitioner to ventilate their grievances before the appropriate forum, which is dealing with the aforementioned appeal and it is made clear that none of the observations as made by the learned Single Bench either in the impugned order dated 19.01.2023 or in the impugned order dated 31.01.2023 shall have any binding effect in the said pending appeal before the coordinate bench.

13. With the aforementioned observations, both the appeals and the connected application are disposed of.

14. Liberty is given to the present appellants to approach the coordinate bench for expeditious

hearing of FAT 311 of 2023. It is further made clear that filing of IA No.CAN 1 of 2023 in WPA 28092 of 2023 will not create any bar to the present appellants to seek similar such relief before the coordinate Bench, which is seisin of FAT 311 of 2023.

- 15.** Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

[SUJOY PAUL, CJ.]

[PARTHA SARATHI SEN, J.]