

20.01.2026
Item No.18
Ct. No.01
RP

MAT 445 of 2025
+
IA No.CAN 1 of 2025
Hossainara Khatun Biswas
Vs.
The State of West Bengal & Ors.

Mr. Dyutiman Banerjee
Mr. Ayanava Das
...For Appellant
Mr. Asish Kumar Guha
Mr. Rajendra Chaturvedi
...For State
Mr. Atis Kumar Biswas
Mrs. Jyoti Agarwal
...For Respondent No.14

PER, PARTHA SARATHI SEN, J.:

1. Affidavit-of-service filed in Court today is taken on record.
2. Parties are represented through their respective learned counsels.
3. Liberty is given to the learned advocate appearing for the private respondent to file vokalatnama in connection with the instant appeal in the department positively within three weeks from today.
4. In the instant appeal the order dated 14.01.2025 as passed by the learned Single Judge in WPA 30985 of 2024 is assailed.

5. While disposing of the said writ petition the learned Single Judge observed that it would be appropriate for the writ petitioner to approach the jurisdictional civil/criminal court for appropriate remedy.
6. In course of hearing Mr. Banerjee, learned advocate appearing for the writ petitioner/appellant took us to the written complaint, as lodged with the jurisdictional IC, a copy of which has been annexed at page 32 of the application, being IA No.CAN 1 of 2025. It is submitted that in the said written complaint it has been specifically averred that the writ petitioner/appellant has obtained due permission from the local authority for construction of her house. However, she has been prevented by the private respondent for no reason whatsoever and despite submission of such written complaint dated 12.12.2024 no action has been taken by the jurisdictional IC and for the aforementioned reason the writ petitioner had approached the learned Single Bench with a prayer for issuance of writ of

mandamus commanding the respondent authorities, more specifically, the respondent no.3 authority herein, to take appropriate steps on the basis of the written complaint dated 12.12.2024.

7. In course of his submission Mr. Banerjee also took us to page no.37 of IA No.CAN 1 of 2025, being a copy of the report dated 5.1.2025, as submitted by the respondent no.3 authority. It is submitted on behalf of the writ petitioner/appellant that from the said report it would reveal that the respondent no.3 authority in course of enquiry noticed that the writ petitioner/appellant got due permission from the local Panchayat for construction of a new building and despite such finding he failed to take any steps against the private respondent by holding that the matter is purely civil in nature.
8. It is further submitted by Mr. Banerjee that the learned Single Judge while disposing of the said writ petition ought to have been noticed the infirmity of the report of the

respondent no.3 authority and, thus, ought to have issued appropriate direction upon the respondent no.3 authority for taking appropriate steps against the private respondents.

9. Such prayer is vehemently opposed on behalf of the private respondents. It is submitted on behalf of the private respondents that in absence of any illegality or infirmity in the order impugned there is hardly any scope to interfere with the same.
10. Learned advocate appearing for the State supports the impugned order.
11. On careful perusal of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, it appears that between the husband of the writ petitioner/appellant and the private respondent a civil suit is pending wherein the husband of the writ petitioner is the plaintiff and in such suit the husband of the plaintiff had sought for declaration of title and for

permanent injunction in respect of plot no.1592 in Mouza-Barbakpur.

12. On careful perusal of a copy of the written complaint dated 12.12.2024 as well as the report dated 5.1.2025 as submitted by the respondent no.3 authority before the learned Single Bench it reveals that the writ petitioner/appellant lodged a complaint against the private respondent in respect of selfsame plot.
13. At this juncture, if we look to the order impugned we noticed that the learned Single Judge while passing the impugned order observed that the writ petitioner complained that the private respondents is making an attempt to encroach her property and for which the writ petitioner has preferred an application under Section 163 BNSS before the jurisdictional Executive Magistrate. The learned Single Judge also observed after considering the report of the police authority that in between the parties civil suits are

pending and, therefore, declined to grant the relief as prayed for.

14. It is settled principle of law that in the event the police authorities refused to lodge any FIR on the basis of a complaint, the appropriate Court is not the High Court for granting the relief in exercise of its high prerogative jurisdiction and such view was taken by the Hon'ble Supreme Court in the case of **Sudhir Bhaskarrao Rao Tambe vs. Hemant Yashwant Dhage & Ors.** reported in **(2016) 6 SCC 277**.
15. We have also noticed that in between the parties civil suit is pending in respect of the selfsame plot in Mouza-Barbakpur and, accordingly, we are constrained to hold that instead of approaching the High Court in its writ jurisdiction, the writ petitioner could have approached common law forum for availing alternative remedy.
16. In view of discussions made hereinabove, we find no reason to interfere with the order impugned.

17. In the result, the instant appeal fails and is hereby dismissed. With the dismissal of the instant appeal, the application, being CAN 1 of 2025, is also dismissed.
18. 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.]