13.11.2026
Court No. 12
Item No.4
Sandip

FMA 950 of 2024

Atanu Ganguly
Vs.
The State of West Bengal & Ors.

Mr. Arun Kumar Mohanty,
Mrs. Kaberi Sengupta Mohanty,
Mr. R. R. Mohanty,
Ms. Pusprita Chowdhury,
Mr. Debasish Bandhopadhyay
...for the Appellant.

Ms. Susmita Saha Dutta, AGP,
Ms. Tanusree Ghosh,
Mr. Dip Jyoti Chakraborty
... for the State.

Mr. Supratim Dhar, Sr. Adv.,
Mr. Santimay Bhattacharyya,
Mr. Ziaul Haque,
Mr. Anirban Das,
Ms. Aloka Bhattacharyya
...for the respondent no. 3.

Mr. Anirban Mitra
...for the respondent nos. 5 & 6.

1. Despite service, none appears for the respondent No. 9.
2. The appellant is aggrieved by an order dated May 6, 2024 passed in W.P.A. 7681 of 2023.
3. By the order impugned the learned single Judge relegated the appellant to the Civil Court before which a suit for partition is pending.
4. The writ petition was filed with an allegation that a subsequent transferee from one of the co-sharers of the undivided property had raised an unauthorised

construction, without following the West Bengal Municipal Act, 1993.

5. During hearing of the application it was submitted by the Municipality that the construction was on the basis of the PMAY – HFA (U) Scheme. On such submission Her Lordship was of the view that the Municipality did not have any role to play in the matter.

6. We do not agree with the learned single Judge for the following reasons :-

(a) Even if, the sanction under the Municipal Act is not required and the construction under the PMAY – HFA (U) is not governed by the Municipal law, the same is governed by a particular procedure prescribed by the State Urban Development Agency.

(b) Under such procedure, the Municipality has an elaborate role to play from the very beginning, that is, from the stage of acceptance of the application for the benefit under the scheme until the stage of granting certificate of completion in respect of the construction under the said scheme upon being satisfied that each and every procedure has been followed, maintained and the construction was in accordance with the drawing provided by the engineers of the municipality.

(c) The allegation with regard to violation of the order of injunction of the learned civil Court can be raised before the learned civil Court and the Civil Court may take steps in respect of such allegations. However, the issue of illegal construction which does not conform

to the law and in this case allegedly does not conform to the scheme under the PMYA scheme can be raised before the municipality as per the procedure and the municipality can take steps in accordance with law.

7. We also find that the municipality had asked the person responsible for the construction, not to proceed with the alleged constructions in view of the order of the civil Court.

8. When the municipality came up with the explanation that the construction was under the scheme and not governed by the municipal laws, the learned trial Judge ought to have directed the municipality to produce relevant records and documents in support of such contention by way of an affidavit, so that the appellant would be in a position to controvert such allegations by filing a proper reply.

9. Under such circumstances, a fresh determination by the municipality is required on the following issues :-

(a) Whether the person responsible for the construction was eligible under the procedure for the benefits under the PMAY scheme.

(b) Whether the procedure prescribed had been followed.

(c) Whether the construction was made in accordance with the drawing, in the person responsible for the construction was otherwise found to be eligible and had fulfilled the criteria.

(d) Whether the construction could have continued in the teeth of the order of injunction.

10. Under such circumstances, the appeal is disposed of with a direction upon the municipality to consider the entire matter on the basis of the issues framed by us and pass a reasoned order upon allowing the appellant as also the person responsible for the construction an opportunity of hearing and a further opportunity to peruse the records of the entire procedure by which the scheme/benefit was sanctioned in favour of the person responsible for the construction. This procedure which is pending before the municipality shall not preclude the learned civil Court from acting in accordance with law. If the appellant approaches the Court alleging violation of the order of injunction, the civil Court will take appropriate steps as may be permissible.
11. A report filed by the Forest Department indicates that the land is outside the jurisdiction of the Forest Department and falls within the municipal area.
12. The order impugned is modified to the above extent.
13. Accordingly, the appeal is disposed of.
14. Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Sarkar, J.)

(Arjun Ray Mukherjee, J.)