

W.P.A 28741 of 2022
Gouri Shankar Karmakar
-versus-
State of West Bengal & Ors.

Mr. Surajit Basu.
...for the petitioner

Mr. Pritam Choudhury,
Mr. Mudassar Nazar Chowdhury.
... for the respondent no. 7

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee.
... for the State

1. The two affidavits-of-service filed in Court on behalf of the petitioner are taken on record.
2. None appears on behalf of the respondent Municipality despite service.
3. However, the writ petitioner, private respondent no. 7 and the respondent State are represented by their respective counsels.
4. By filing the instant writ petition, the writ petitioner has prayed for issuance of appropriate writ by against the respondent authorities, more specifically against the respondent no. 3 and 3A authorities commanding them to take appropriate steps for demolition of the alleged illegal construction as made by the private respondents over the property of the writ petitioner particulars of which has been

mentioned in paragraph no. 2 of the instant writ petition.

5. At the time of hearing learned counsel appearing on behalf of the writ petitioner at the very outset draws attention of this Court to page nos. 11 to 27 of the instant writ petition (Annexure P-1) being a copy of the judgment and decree dated 30.01.2010 as passed in P.S. Suit/Suit Case No. 11 of 2008 by the Jurisdictional Civil Judge, Senior Division, Islampur, Uttar Dinajpur.
6. It is submitted on behalf of the writ petitioner that in the said suit the private respondents' prayer for declaration of their title and for permanent injunction over the aforementioned property was not considered favorably by the said Trial Court and as against the said judgment and decree and an appeal was also preferred by the private respondents which is however dismissed for default before a Division Bench of this Court vide order dated 23.06.2022 in F.A. 80 of 2011 (Premanda Karmakar & Ors. vs. Gouri Sankar Karmakar & Ors.) (Annexure P-2).
7. It is submitted that it is the specific case of the writ petitioner that despite dismissal of the said suit and appeal, the private respondents most illegally initiated a work of construction over the aforementioned property for which the writ petitioner approached the respondent no. 3

authority by submitting a written representation dated 22.11.2022.

8. It is submitted that despite submission of such representation, the respondent no. 3 authority has not taken any steps and thus, appropriate reliefs may be granted to the writ petitioner in terms of the prayer made in the instant writ petition.
9. Per contra, learned counsel appearing on behalf of the private respondent no. 7 however contended that the instant writ petition is not at all maintainable, in view of the fact that the writ petitioner has chosen a wrong forum for ventilating his grievance despite availability of the alternative remedy.
10. It is further submitted that the respondent no. 3 authority has got no jurisdiction and/or authority to decide the representation dated 22.11.2022 since no case has been made out that the alleged construction has been started violating the building rules of the West Bengal Municipal Act.
11. Learned counsel appearing on behalf of the respondent State supports the case of the private respondent no. 7.
12. On careful consideration of the entire materials as placed before this Court and after hearing the learned counsel for the contending parties, it appears that it is the specific case of the writ petitioner that the private respondents are making

construction over the property of the writ petitioner though they have not got title and interest over the same.

13. In considered view of this Court, in such a situation the writ petitioner is not supposed to approach this Court for ventilating his grievance since disputed question of facts cannot be decided by a writ Court which however can very well be addressed in common law forum which has machinery to record evidence and appreciate pleadings and evidence.

14. In view of such and in view of the availability of the alternative remedy, this Court considers that the instant writ petition is not at all maintainable.

15. With the aforementioned observations, WPA No. 28741 of 2022 is dismissed.

16. It is however made clear that while dismissing the instant writ petition, this Court has not gone into the merits of the representation dated 22.11.2022 as well as with regard to allegations made in the instant writ petition and thus, all points are kept open for adjudication, in the event, the writ petitioner approaches the appropriate forum for ventilating his grievance.

(Partha Sarathi Sen, J.)