
(2018) 07 CAL CK 0131
In the Calcutta High Court
Case No : W. P. No.25371 (W) of 2017

Anushree Giri (Karan)

APPELLANT

Vs

State of West Bengal & Ors.

RESPONDENT

Date of Decision : 19-07-2018

Acts Referred:

Transfer of Property Act, 1882 — Section 52

Citation : (2018) 07 CAL CK 0131

Hon'ble Judges : DEBANGSU BASAK, J

Bench : Single Bench

Advocate : Soumen Dutta, Billwadal Bhattacharya, Sayak Chakraborty, Kalipada Chakraborty, L. Mondal, Manas Kundu

Final Decision : Disposed Off

Judgement

The complaint is that, the private respondent is acting in breach of an order passed by the appeal court on November 10, 2014. Noticing such

complaint, an interim order was passed on May 16, 2018. The directions for filing affidavits were granted. The parties have filed their respective

affidavits. Learned advocate for the petitioner submits that, the affidavits do not disclose any new material after the parties have filed their affidavits.

No appeal has since been preferred against such an order.

Learned advocate appearing for the private respondents submits that, the writ petitioner is guilty of suppression of facts. He has misled the Court. The

order of the Division Bench cannot be read to mean that, the plan cannot be sanctioned in respect of the property. Only two decimals of land are

involved in the suit. The entirety of the land is not involved in the civil suit. Moreover, Title Suit No.165 of 2007 stood dismissed for default on July 29,

2017 and the private respondent was the plaintiff in such suit.

The private respondent as the plaintiff does not wish to proceed with such suit. Therefore, there is no impediment on the municipality to grant sanction

of the building plan. He also refers to the annexures to the affidavit in opposition particularly to the copy of the plaint of Title Suit No.37 of 2011 and

submits that, the schedule property in respect of which an interim order was passed is for two decimals of land.

The State is represented. Having- considered the rival contentions of the parties, I find that, the private parties are litigating before the civil forum by

filing number of suits. One of such suits is Title Suit No.165 of 2007. Such same suit was dismissed for default on July 19, 2017. The other suit is Title

Suit No.37 of 2011. The plaint of such suit speaks of two schedules one of the Schedule is for two decimal of land and the other schedule is for 37

decimal of land. When the Division Bench was considering the appeal on November 10, 2014, the suits noted above, were pending. The Division

Bench passed the following order:

“The appellants are before us contending that in the light of Section 52 of the Transfer of Property Act, the outcome of the litigation would

determine the rights of the parties, therefore there was no justification in the order of the learned Single Judge. The appellants’ counsel further

submits that the property is now transferred in the name of his own daughter, therefore, there was justification to continue the writ proceedings. The

3rd party respondent submits that the daughter of the appellants engaged surveyors to measure the properties and therefore, after taking part in such

survey, there is no justification in proceeding with the appeal.

So far as the stand of the municipality, according to them in the light of status quo order by Civil Court, parties to the suit ought not to have proceeded

further in the matter without the leave of the Court and therefore now the municipality is not acting upon the application of the respondent/defendant

or request of the appellant herein as they would abide by the outcome of the Civil Suit.

If the property were to be transferred to third parties and if he/she has taken participation in the measurement proceeding, it is altogether a different

matter. In other words, initiation of proceedings in the name of appellant by the municipality would not arise even otherwise as the property does not

belong to appellant/writ petitioner any more. However, in the light of submission

of learned standing counsel for municipality that they would not proceed further, we are of the opinion, nothing remains for consideration, we record the submission of learned counsel for municipality and dispose of the appeal without any order as to costs.â??

Considering such order of the Division Bench an interim order was passed on May 16, 2018 restraining the municipality from granting any sanction of any of the building plan that may be filed by the private parties. No new material is placed before the Court subsequent to the order of the Division

Bench for the Court to a different view than the existing interim order. The municipality will not sanction any building plan in respect of the properties involved in the civil suits till the disposal of the civil suits.

W. P. No.25371 (W) of 2017 is disposed of. There will be no order as to costs. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.