

(2013) 07 CAL CK 0002

In the Calcutta High Court

Case No : M.A.T. No. 978 of 2013 and C.A.N. No. 6388 of 2013

Smt. Kalyani Mukherjee and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 08-07-2013

Acts Referred:

Citation : (2013) 3 WBLR 639

Hon'ble Judges : Sambuddha Chakrabarti, J; Pranab Kumar Chattopadhyay, J

Bench : Division Bench

Advocate : Ram Chandra Guchait and Arun Maity, for the Appellant; Anjan Bhattacharya, Subhrangsu Panda, Ina Bhattacharyya for the Respondent No. 5, Jayanta Banerjee and Subir Pal for the State, for the Respondent

Judgement

1. This application has been filed in connection with the appeal preferred from the judgment and order dated 10th June 2013 whereby and whereunder a learned Judge of this Court finally disposed of the writ petition without granting necessary relief to the appellants herein. The learned Single Judge while deciding the writ petition advised the appellants to resolve the issue relating to possession in question in a Civil Court. We have doubt whether the appellants herein inspite of being the legal owners should be asked to approach the Civil Court for the possession. The learned Counsel representing the club submits that the appellants herein purchased the property with adjacent 10 ft wide common passage and with a right to exercise easement.

2. The club therefore, cannot have any right over the property in question under any circumstances excepting the easement right over the 10 ft wide common passage.

3. It is not in dispute that the appellants/petitioners herein are the lawful owners of the plots in question and the Howrah Municipal Corporation has also sanctioned a building plan for raising construction on the land in question.

4. It has been alleged that the members of the club, namely, the respondent No.

5 are preventing the petitioners from carrying on construction work at the plot in question on the basis of the sanctioned building plan. The lawful owners of the land cannot be prevented from carrying on construction work as per sanctioned building plan. It is also the duty of the local police authorities to provide adequate assistance to a citizen in order to protect his property and to enjoy the same in a peaceful manner. In the present case the appellants herein are entitled to carry on construction work at their own site on the basis of the sanctioned building plan. Any unauthorised interference, by any individual/individuals therefore, should not be permitted by the police authorities.

5. Mr. Anjan Bhattacharya, the learned Counsel representing the respondent No. 5 submits on instruction that the respondent No. 5 never interfered with the rights of the petitioners to carry on construction work at the site in question. Mr. Bhattacharya, however, submits that the members of the club are entitled to enjoy the easement right over the 10 ft wide common passage adjacent to the land of the petitioners herein.

6. In the aforesaid circumstances, we direct the Commissioner of Police, Howrah and the Officer-in-Charge, Malipanchghora Police Station to provide adequate assistance to the petitioners so that the said petitioners can carry on construction works strictly in accordance with the sanctioned building plan at the site in question.

7. The police authorities, namely, the respondent Nos. 3 and 4 will also ensure peace and tranquility in the area in question in every possible manner and will not allow any body to interfere with the right of the petitioners to carry on construction work at the site in question in accordance with the sanctioned building plan.

8. With the aforesaid directions, we set aside the impugned order under appeal passed by the learned Single Judge and dispose of the application as well as the appeal upon treating the same as on day's list. There will be however, no order as to costs.

Let urgent xerox plain copy of this order duly counter-signed by an Assistant Registrar (Court) be made available to the learned advocates appearing for the parties.