

30.11.2023  
Item No.06  
Court No.6.  
S. De

**M.A.T. 1995 of 2023  
with  
I.A. No. CAN/1/2023**

**Tapan Baidya & Anr.  
Vs  
The State of West Bengal & Ors.**

Mr. Shyama Prasad Purkait,  
Ms. Moumita Mondal,,  
...for the appellants/writ petitioners.  
Mr. Debojyoti Deb,  
Ms. Somdyuti Parekh,  
...for the respondent no.9.  
Ms. Rama Halder,  
...for the State.

Affidavit-of-service filed in Court today be kept  
with the records.

The private respondent appears. The other  
respondents are not represented in spite of having  
received notice as would appear from the affidavit-of-  
service.

A judgment and order dated September 12,  
2023, whereby the writ petition of the appellants being  
WPA 26804 of 2016 was dismissed, is the subject  
matter of challenge in this appeal.

The appellants approached the learned Single  
Judge alleging that the private respondent had made  
illegal construction on the land of the appellants. The  
appellants/writ petitioners prayed for an order

directing the Proadhan of Basanti Gram Panchayat to take steps for demolition of such construction.

The learned Judge noted that an original application being O.A. 983 of 2013 was pending before the West Bengal Land Reforms & Tenancy Tribunal and there was nothing to show that the writ petitioners are owners of the land on which alleged illegal construction has been made by the private respondent. Observing as aforesaid, the learned Judge dismissed the writ petition. Hence, this appeal at the instance of the writ petitioners.

Learned advocate for the appellants/writ petitioners says that the original application before the Tribunal was for an order granting liberty to the applicants to deposit rent in respect of land of which they are lessees under the Government. There is no dispute that they are the owners of the land in question. The Panchayat, which is the sanctioning authority in the concerned area, should look into the appellants' grievance that the private respondent has made unauthorized construction.

Mr. Deb, learned advocate appearing for the private respondent strongly disputes that the appellants have any kind of right, title or interest in respect of the land in question. He says that the concerned land is vested land. He further says that there is a sixteen-year old tin structure on the land in

question. There is no pucca structure requiring any sanctioned plan.

The submission made on behalf of the private respondent is disputed by learned advocate for the appellants.

Having heard learned counsel for the parties, we are of the view that ends of justice will be served if the Prodhan of Basanti Gram Panchayat considers and disposes of the representation of the appellants dated September 10, 2016, which is at page 52 of the stay petition, by a reasoned order, in accordance with law, within a period of eight weeks from the date of communication of this order along with a copy of the said representation, after giving due opportunity of hearing to all concerned parties including the appellants and the private respondent herein. If the Prodhan finds that any unauthorized construction has been made by the private respondent which does not have the sanction of law, he will take appropriate steps for demolition of the same, in accordance with law.

We clarify that the Prodhan shall restrict his enquiry only to the issue of alleged unauthorized construction made by the private respondent. The Prodhan shall not enter into any title dispute or whether or not the private respondent has encroached on the land of the appellants. As regards any title

dispute, the parties will be at liberty to carry the same to the appropriate civil forum.

No useful purpose will be served by keeping the appeal pending.

Since we have not called for affidavits, the allegations contained in the stay application are deemed not to be admitted by the respondents.

Accordingly, MAT 1995 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2023.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

**(Arijit Banerjee, J.)**

**(M.V. Muralidaran, J.)**