

03.05.18

Item No.18
Court No.15
Krishnendu

W.P. No. 3528 (W) of 2018

In re: An application under Article 226 of the Constitution of India filed on 14.02.2018;

And

In re: Md. Alauddin Molla & Anr.

- Versus -

The State of West Bengal & Ors.

Mr. Partha Pratim Roy
Mr. Sk. Jalaluddin

For the Petitioners

Mr. Hiranmoy Bhattacharya
Mr. Ayan Banerjee

For the State

Mr. Ziaul Haque

For the Respondent Nos.
7,8,9,11,12,14 & 15

The subject matter of challenge in the present writ petition is an order dated 7th November, 2017 issued by the respondent no.4.

Mr. Roy, learned advocate appearing for the petitioners submits that the petitioners approached this Court earlier by a writ petition being W.P. 12841 (W) of 2017, *inter alia*, praying for demarcation of their land pertaining to which a representation was submitted to the appropriate authority on 17th March, 2017. By an order dated 4th May, 2017 the Court observed that the dispute requires to be considered by the statutory authority under the law, in accordance with law and directed the respondent no.4 to consider and dispose of the said representation. Pursuant to the said order, the order impugned in the present writ petition was passed.

He further submits that in view of the said order passed by this Court, the respondent no.4 could not have rejected the petitioners' claim citing a judgment of a co-ordinate bench wherein it was, *inter alia*, observed that any dispute between the private parties arising out of enjoyment of an immovable property which is purely civil in nature, the aggrieved party must approach the competent civil forum.

Mr. Bhattacharya, learned advocate appearing for the State respondents submits that the respondent no. 4 had acted strictly in consonance with the direction passed by the earlier Court. There is

no palpable infirmity in the said order since after considering the representation, the said respondent found that the dispute is civil in nature and accordingly rejected the petitioner's prayer in view of the order passed in W.P. 22255 (W) of 2016. According to Mr. Bhattacharya, the revenue authority has no jurisdiction to decide a dispute pertaining to enjoyment of an immovable property and, as such, there is no infirmity in the order impugned.

The learned advocate appearing for the private respondents submits that the dispute is pertaining to an immovable property and the petitioners ought to have approached the competent civil forum.

In the representation, which was directed to be considered by the order passed in W.P. 12841 (W) of 2017, the petitioners', *inter alia*, stated that *"our aforesaid land may properly be surveyed and/or taken measurement in respect of the aforesaid plot no. 437 and 438 and our said land may be properly demarcated, which we have been possessing in respect of Plot No. 437 measuring an area of about 78 decimals and Plot No. 438 measuring an area of about 8 decimals under Mouza- Harekrishnapur, J.L. No. 145"* and prayed before the authority to *"do the needful at the earliest to enable to take physical peaceful possession of our aforesaid land and for such act of kindness, we shall be ever grateful to you"*.

A composite reading of the said representation reveals that the dispute among the petitioners and the private respondents is purely civil in nature and is pertaining to enjoyment of an immovable property. The revenue authority cannot decide such a dispute and as such the petitioners' representation was rejected and there is no infirmity in the order impugned.

For the reasons discussed above, the writ petition is dismissed.

Needless to observe the dismissal of the writ petition will not prevent the petitioners from approaching the competent civil forum.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Tapabrata Chakraborty, J.)