

Order No. 26 dated 31.08.2023

Today is fixed for passing order in respect of the temporary injunction application filed by the plaintiff on 24.11.2022.

The brief facts of the case being that the property belongs to a deity namely, Shri. Shri.Dharmaraj Thakur. Such a fact has been admitted by both the parties in their pleadings. The original Shebait of the deity was Dhirendranath Ghosh as per the CSROR, then came Nalinakhyo Ghosh, as per the RSROR and now, the property is recorded in the name of one Shebait, Gokul Chandra Ghosh as per the LRROR. The Shebait has delegated their power of management and protection of the aforesaid deity to the villagers of Baharpur. The villagers of Baharpur were unable to bear the maintenance cost of the said deity, as a result of which, they requested the plaintiff to develop the property of the deity consisting of a pond and its bank. Accordingly, some persons of the village namely, Krishnadas Panja, Tushar Ghosh, Sujit Nayek, Balaram Pan and Prabir Ghosh, executed a yearly lease for a period of 10 years on 11.07.2012, for a consideration amount of Rs. 24 thousand to be paid per year by the plaintiffs to the villagers for the maintenance of the deity. After the execution of the deed, the plaintiffs developed the lease property into an amusement park in the name and style of “Upoban” and have cultivated fishes in the suit pond.

The dispute arose when the lease period was over. The present defendants, who have signed as witness in the lease deed are forcefully trying to evict the plaintiffs from the schedule suit property. The grievance of the plaintiff being that, the plaintiffs have invested a huge amount of money for developing the entire area. They have employed 40 to 50 workers, who get wages for their work. Pisciculture is done in the leased pond and huge amount of revenue is generated from the leased property, which was lying unused prior to such development by the plaintiff. Now, at this stage, if the defendants who are just mere witnesses and who have not executed the lease deed, try to evict the plaintiff forcefully from the schedule mentioned suit property, without following the procedure established by law, the plaintiffs will be severely prejudiced.

The defendants have stated that, the pond and its bank are recorded in the LR as “to be used for the public at large”. The defendants further admitted the existence of the lease deed. Defendants are claiming the plaintiffs to be forceful occupier as the tenure of the lease deed has expired. But the defendant has not prayed for counter claim in respect of eviction of the plaintiffs from the schedule mentioned property. The defendants have admitted that, the Shebait has delegated the right to maintain the suit deity to the villagers of Baharpur. The defendants have further alleged that, such a lease deed cannot be executed in favour of the plaintiffs because such an act is not permissible under the Provisions of West Bengal Land Reforms Act. Again the defendants have failed to challenge the lease deed lying in favour of the plaintiffs in their written statement. The defendants also failed to bring any action before the authorized Authority under the West Bengal Land Reforms Act, against the present plaintiffs.

Now, whether the plaintiffs’ possession in respect of the schedule suit property is legal or not and whether the defendants have any right to challenge or disturb such possession of the plaintiffs in respect of the schedule suit property or not, are all matter of trial. At this stage, of the suit wherein both parties are filed their pleadings, temporary injunction application and objections, this Court has to observe three essential ingredients, being urgency, irreparable loss and injury and balance of convenience and inconvenience.

The possession of the plaintiffs in respect of the schedule suit property, has been admitted by the defendants. It is true that, the tenure of the lease deed has expired, then also the plaintiffs are in possession and occupation of the schedule suit property. As per the settled principle of law, no person can be dispossessed from any place forcefully, without following the procedure established by law. At this stage, the court is of the opinion that, if an order of temporary injunction is not granted in favour of the plaintiff then, the **plaintiff will suffer huge financial loss which will be irreparable in nature, because the plaintiffs have invested a huge amount of money, endeavour and time**, for developing the leased property belonging to the deity. If the temporary injunction is not granted in favour of the plaintiffs at this stage, **the entire suit filed by the plaintiff will become infructuous in nature**. Not only that, if an order of temporary injunction is not granted in favour of the plaintiffs **there will be disruption of income of 40 to 50 workers who are working in the suit property**.

On the other hand, the defendant/villagers, have not explained as to what inconvenience will be suffered by them if a temporary injunction is granted in favour of the plaintiffs. The defendants have also not stated in their written objection in respect of their future plans if any, with regard to the schedule suit property or its usage or its development. The defendants in their written objection have also not stated as to why they require the schedule suit property and what loss they are suffering at present.

Under such circumstances, I am inclined to allow the temporary injunction application filed by the plaintiff on 24.11.2022 in the form of status quo as well as restraint.

Both parties are directed to maintain status quo in respect of the schedule suit property till disposal of the suit. The defendants are further restrained from destroying the schedule suit property by chopping off any tree or plant as planted in the schedule suit property. Both parties are restrained from changing the nature, character and possession in respect of the schedule suit property till the disposal of the instant suit.

Hence, it is,

Ordered

that the temporary injunction application filed by the plaintiff on 24.11.2022 is hereby allowed on contest considering the fact, without any order as to costs.

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The extension application is thus disposed of.

Fix 08.12.2023 for framing of issues.

Dictated & corrected.

Civil Judge (Junior Division)
2nd Court, Burdwan

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