

ASKM030069362022



Present: Mr Sailen Buragohain, AJS.

Misc (J) case No. 508/2022

In T.S. No. 684/2022

O R D E R

01.04.2024

Parties are represented.

Today is fixed for order.

I have already heard both sides at length.

The petitioner vide this instant petition has prayed for temporary injunction restraining the opp. Parties from causing any disturbance/annoyance/nuisance to the petitioners while undertaking repairing or renovation works of the Bhogghar at its existing position.

The petitioner has submitted that the Bhogghar cum Store Room Cum Prasad Ghar is situated just near the eastern side of main iron gate measuring 11 ft. x 16 ft. which is an simple GI Sheet ekchali room surrounded

by barricade. The said Bhogghar was constructed by 8 years ago as a result of which its roof now has become deteriorated which causes water leakage in the room during the rainy season. Further to that, it is stated by the petitioner side that the bamboo post of the ekchali room have also got dilapidated and may collapsed at any time. Therefore, the said ekchali Bhogghar room is required to be renovated/repaired.

The petitioner further in support of his claim has annexed some copies of photographs with the petition.

On the other hand, the opp. parties by filing written objection has raised the contentions that the prayer for ad-interim injunction for construction of Bhogghar cum Store Room is not maintainable in view of provisions of Section 327, 328 and 385 of GMC Act, 1971. Further, the opp. Parties contended that the alleged GI Sheet ekchali room which is portrayed as Bhogghar was in fact erected only for a temporary purpose of storing for construction materials used for the renovation of the "Chilarai Nagar Rajohua Namghar" and also to give shelter to the

labours engaged in the construction work which was being carried out for the renovation of the “Chilarai Nagar Rajohua Namghar”.

During the proceeding, for proper adjudication of the matter in dispute, this Court was pleased to appoint the Civil Nazir as Amin Commissioner with a direction to make local investigation in respect of the schedule property portraying as Bhogghar by the petitioner and to submit a report on the point of status of structural condition of the said Bhogghar along with other points of inquiry. Accordingly, the Civil Nazir has submitted report along with photographs with a statement to the effect that the said Bhogghar requires repairment and the said structure is measuring 16 ft. x 11 ft. Further it is also stated that due to structural position of the said Bhogghar, the entry gate can be half opened only as the iron gate at the entry point is covered half by the Bhogghar. On the other hand, there is a passage from the northern side along with a iron gate for making entry into the Namghar. However, the report transpires that there

appears to be no scope of shifting the Bhogghar to any other place.

During the hearing, Ld. Counsel for the opp. Party verbally submitted that he has no objection if the petitioner agrees to repair the said ekchali room in as much as the proposed reparation work is done in respect of temporary structure such as repairing of bamboo post, leakage in tin roof, tin wall etc., but the petitioner is in no way can be allowed to make any permanent construction in garb of reparation work in the said Bhogghar.

Ld. Counsel for the petitioner has also assured this Court of not making any permanent construction over the schedule property in tune with the conditions set by the Ld. Counsel for the opp. Party.

Ld. Counsel for the petitioner side ardently sought the relief of reparation of the existing Bhogghar in view of present dilapidated condition of the Bhogghar upcoming rainy season. He has further submitted that prayer for making reparation in the Bhogghar is in no way going to cause any prejudice to the opp. Party as same is

proposed to be done only for the purpose safe guard of the structure from being collapsed and to prevent any uncalled for incident during the rainy season.

Considering the facts and circumstances in the instant case and taking into consideration materials available on record before the Court and submissions made by both sides, I am of the opinion that although the instant application is made under Order 39 Rule 1 and 2 for temporary injunction, but in view of mutual consensus reached by both sides on the point of repairment of temporary structure and not making permanent structure in garb of repairment work, same may be properly adjudicated upon and disposed of without considering the three golden principles, i.e. Prima facie case, balance of convenience and irreparable loss. Under such circumstances, I deem it prudent to invoke the power under Section 151 of CPC to meet the ends of justices. Therefore, the prayer of making renovation/repairment is allowed to the extent of repairing of bamboo post, leakage in tin roof, tin wall etc. which involves

repairement of temporary structure of the said Bhogghar.

However, the petitioner is prohibited to make any permanent structure over the suit property.

Accordingly, the instant Misc (J) case is disposed of on contest.

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