

26/11/2021
Item No. 57
Court No. 06
S. DE

Through Video Conference

M.A.T. 177 of 2021
with
I.A. No. CAN/1/2021
I.A. No. CAN/2/2021
I.A. No. CAN/3/2021
with
W.P.A. 19244 of 2019

Manab Pandey & Others.

Versus

Shyamali Biswas & Others.

Mr. Shamim-Ul-Bari,
Ms. Molly Saha, ...for the appellants.

Mr. Anindya Lahiri,
Ms. Pranati Das, ...for the respondents.

Mr. Chandi Charan De, Ld. Addl. Govt. Pleader.
Mr. Anirban Sarkar, ...for the State respondents.

Supplementary affidavit filed on behalf of the writ petitioners/respondents be kept with the record.

The writ petitioners had approached the learned Single Judge for implementation of an order dated August 6, 2019, passed by the Executive Engineer (PWD), Barasat Division, North 24-Parganas, which was for demolition of an unauthorized construction alleged to have been made by the present appellants on State Highway. The grievance of the writ

petitioners was that the authorities were not taking steps to carry out the said order.

On January 27, 2021, a learned Single Judge of this Court passed an interim order, the operative portion whereof reads as follows :-

“The petitioners as well as the respondent nos.11 to 13 will appear before the concerned Executive Magistrate on February 2, 2021 at 2 p.m. for passing the order of removal of the encroachment under sub-Section (3) of Section 10 of the State Highways Act, 1964. If any of the parties do not attend the hearing on the above-mentioned fixed date, the concerned Executive Magistrate shall be entitled to proceed with the matter ex parte. Thereafter, the District Magistrate, North 24 Parganas shall take all steps for removal of the encroachment made by the parties herein, on the State Highway at Bongaon.”

Against the aforesaid order, the private respondents in the writ petition have come up in appeal before us.

The short grievance of the appellants is that the order of the Executive Magistrate was passed without affording an opportunity of hearing to the appellants. Further, by reason of the order impugned herein, the appellants’ right of statutory appeal against the order of the Executive Magistrate has been taken away.

We have heard learned counsel for the parties. We dispose of the appeal, stay application as also the writ application by modifying the impugned order to the effect that if the appellants prefer an appeal against the demolition order of the Sub-divisional Officer dated February 3, 2021 within three weeks from date, the appellate authority shall decide the appeal, in accordance with law without going into the point of time bar. If such appeal is filed within the aforesaid period of three weeks, no action for demolition will be taken till the disposal of the appeal. In the event, the appeal is not filed within the aforesaid period of three weeks, the authorities will be at liberty to implement the demolition order. Needless to say that if the appellants' statutory appeal is dismissed and the demolition order is affirmed, the order will be implemented immediately.

The jurisdictional police authorities shall render all assistance and co-operation to the administration in implementing the demolition order, in the event such order is affirmed by the appellate authority.

The entire process as indicated above should be completed within a period of two months from date.

MAT 177 of 2021, IA No. CAN 1 of 2021, CAN 2 of 2021, CAN 3 of 2021 and WPA 19244 of 2019, treating the same as on day's list, are accordingly disposed of.

After the matter is disposed of, we find that certified copy of the impugned order has not yet been filed by the appellants. The appellants undertake to file such certified copy in the department within four weeks from date.

In default of this certified copy being filed within the aforesaid time period, this order will stand recalled and the appeal shall stand dismissed.

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.

[Kausik Chanda, J.]

[Arijit Banerjee, J.]