

10.12.2021
Item No.2
Crt. No.11.
KB

**MAT 622 of 2021
with
IA No. CAN 1 of 2021
IA No. CAN 2 of 2021**

**The Chairman, Haldia Municipality
Vs.
Sukdev Bera & Others**

(Via Video Conference)

Mr. Supriyo Chattopadhyay
... For the appellant

Mr. Susovan Sengupta
Mr. Subir Pal
... For the State.

Mr. Salil Kr. Maity
Mr. Raj Kr. Sain
Ms. Pinki Saha
... for the respondent no.01

In Re: CAN 1 of 2021:

The appellant submits that there is a delay of 23 days in filing this appeal.

Heard.

Cause shown is found to be sufficient.

CAN 1 of 2021 is allowed.

MAT 622 of 2021 is taken on board.

In Re: MAT 622 of 2021 with CAN 2 of 2021

This is an appeal against the order passed by the Hon'ble Single Judge in WPA 22242 of 2019 dated 15th

February, 2021 wherein the Hon'ble Single Judge has directed the respondent no.3 of the writ petition i.e. the Executive Engineer; Tamruk Highway Division, Public Works Department (Road), Government of West Bengal to initiate proceedings under Section 10(1) of the 1964 Act for removal of the impugned encroachment.

Learned Counsel for the appellant has submitted that on 21st of January, 2021 a decision has been taken by the District Magistrate, Purba Medinipur wherein in Clause 13 it is mentioned that:- "the Executive Engineer, PWD (Roads), Purba Medinipur was requested to look into the matter for providing NOC to Haldia Municipality for road-side development and beautification along SH-4, Mecheda to Durgachak Road starting from Subarna Jayanti Bhavan to Manjushree More under Green City Mission."

The Counsel for the appellant has submitted that as per the decision taken by the District Magistrate the Municipality had started works under Green City Mission and had constructed double storied R.C.C. building consisting of public toilet as well as stalls in the subject land admittedly the land belongs to the Public Works Department (PWD).

The said construction was made by the appellant without getting any approval from the PWD. The writ

petitioner made a complaint alleging that the Municipal Authority had constructed public toilet and stalls due to which the ingress and egress of the writ petitioner has been blocked.

On the complaint of the writ petitioner, no decision has been taken by the concerned authorities and accordingly the writ petitioner had filed a writ petition before the Hon'ble Single Judge.

The Hon'ble Single Judge had appointed a Special Officer and called for a Report with regard to the construction made by the appellant in the subject land. The Special Officer had submitted report on 10.02.2021. The Hon'ble Single Judge granted liberty to the appellant to file objection to the report by 15.2.2021, but the appellant has not filed any objection to the said report. It reveals from the report of the Special Officer that the Appellant had made construction over the subject land belongs to the PWD without approval of the PWD, and also blocked the ingress and egress of the writ petitioner.

After going through the Report submitted by the Special Officer, the Hon'ble Single Judge had passed order by directing the Executive Engineer to initiate proceeding u/s 10(1) of 1964 Act for removal of the illegal construction.

The Counsel for the appellant had argued before this Hon'ble Court that he could not get an opportunity to file objection to the Report submitted by the Commissioner and without giving an opportunity of hearing to the appellant, the Hon'ble Single Bench had passed the impugned order. The submission made by the appellant is otherwise from the order passed by the Hon'ble Single Judge dt. 10.2.2021 is wherein the Hon'ble Single Judge granted opportunity to file affidavit dealing with the allegations but the appellant has not filed any affidavit.

In compliance of the order passed by the Hon'ble Single Judge, the Assistant Engineer, Haldia Highway Division had issued notice to the appellant on 23rd of March, 2021 directing the Municipal Authority to remove the said structures/obstructions to the satisfaction of the Highway Officer on or before 20.4.2021.

The counsel for the appellant further submitted that the Assistant Engineer without giving a show cause notice and opportunity of hearing had issued an order for removal of obstruction.

The Counsel for the respondent had submitted that the appellant had made construction without the approval of the PWD. Admittedly, the land belongs to the

PWD. The allegation made by the writ petitioner has been confirmed by the report of the Special Officer.

It is crystal clear from report that the appellant has made illegal construction over the land of P.W.D. due to which ingress and egress of the writ petitioner has been stopped.

The Counsel for the respondent further submits that the statutory authority cannot challenge the order passed by the statutory body, as the Municipal Authority has made illegal construction over the land of the PWD and the P.W.D. intends to clear the illegal construction over the disputed land, but the appellant is not ready to remove the illegal construction.

This Court has considered the rival submissions of the parties and the materials available on record.

It is admitted that the Municipal Authority had made construction over the land of the PWD without the permission of the PWD. The said illegal construction is restraining the ingress and egress of the writ petitioner. The Report of the Special Officer supports the contention of the writ petitioner as well as the PWD.

The Hon'ble Single Judge by considering the report of the Special Officer has only directed the authority to initiate proceeding under Section 10 of the

Highways Act for removal of the impugned encroachment over the property in question.

The PWD had acted upon the order passed by the Hon'ble Single Bench.

This Court has not found any illegality with the order passed by the Hon'ble Single Judge and there is no merit in the appeal filed by the appellant.

Hence, **MAT 622 of 2021** with **CAN 2 of 2021 is dismissed.**

There will be no order as to costs.

All parties to act in terms of a copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Krishna Rao, J.)

(Subrata Talukdar, J.)