

10.12.2021
Item No.10.
Court No.6.
S. De

Through Video Conference

**F.M.A. 1176 of 2021
I.A. No. CAN/1/2021
I.A. No. CAN/2/2021**

Abdur Rahim.

Vs

The State of West Bengal & Ors.

Mr. Shamim Ul Bari,
Ms. Molly Saha,
...for the appellant.
Mr. Suprio Ray Choudhury,
Mr. Sankar Ghosh,
...for the respondent nos. 3 to 5.
Mr. Sudipto Panda,
Mr. Subrata Ghosh,
...for the State respondents.

By consent of the parties, the appeal and the applications are taken up for hearing together.

It appears that the appellant by an unregistered declaration donated his land to the Barasat Municipality for construction of a submersible pump on the condition that as against such land he would be given a suitable appointment in the municipality. Accordingly, the appellant was given a temporary appointment by the municipality. Subsequently, it was found that the appellant did not possess the required qualification for the post in question. The municipality on that ground terminated the service of the appellant.

Thereafter, an advertisement was published by the municipality for filling up the said post. The appellant challenged the said recruitment procedure by filing a writ application before this Court wherein an interim order was passed restraining the municipality from taking any step for filling up the said post. The appellant, thereafter, filed a contempt application alleging violation of the said interim order. On the said contempt application on November 8, 2017, an order was passed holding the Chairman of the municipality guilty of contempt, but upon accepting the apology from the alleged contemnor, the said contempt application together with the writ petition was disposed of directing the contemnor to return the vacant and peaceful possession of the appellant's land after removing the equipment or any construction made by the municipality on the said land. It was further directed that the appellant would be paid rent compensation of Rs.69.000/-.

This present writ application was, thereafter, filed before the learned Single Judge with a prayer for appointing him in the said post. The appellant took a stand before the learned Single Judge that he was willing to return back the land in question in favour of the municipality again.

Learned Single Judge dismissed the said writ application holding that since the land in question had

already been returned to the appellant along with rent compensation as per the direction passed by this Court, the appellant could not ask for a direction upon the municipality to take back the said land once again and give him the appointment.

Before us, challenging the order impugned, the appellant strenuously argued that the land in question had not been returned to him. The equipment of the municipality is lying on the said land. It has been further argued by the appellant that the appellant's service was terminated fraudulently by the municipality since the appellant was not underqualified to be appointed as a pump operator.

It has, further, been submitted that three other persons, whose lands were utilised by the municipality, were given appointments, but the appellant had been discriminated against.

Since it was seriously disputed by the appellant as to the delivery of possession of the land by the municipality back to him, a report was called for by this Bench on December 2, 2021.

Pursuant to the said order, the municipality has filed a report by way of an affidavit. The relevant part of the said report is quoted below:

“Huge expenditure were incurred to demolish the pump room, dismantle the pump set and

taking out all the iron pipes from underground and remove them from the said land. The said land was restored to its original position pursuant to the order dated 08.11.2017 and the order dated 07.02.2020 respectively passed in Contempt application No.CPAN 538 of 2018.

The residual debris out of the excavation of the foundation of the pump room which were on the land and the PVC casing (upto 20 feet in the subsoil) were all removed from the said land. The said operation was conducted in presence of Sub-Assistant Engineer and Assistant Engineer of Barasat municipality.

The photographs of the site after removal of pump room, pump set, the iron pipe and PVC casing and the order dated 07.02.2020 are annexed hereto and collectively marked with Letter-“A”.

(c) The said application for contempt being CPAN No. 538 of 2018 in W.P. No.32147 (W) of 2013 for non compliance of the order dated 08.11.2017 and the order dated 07.02.2020 was heard on 08.01.2021 by Hon’ble Justice Arindam Sinha and during hearing a copy of the note sheet

showing that the land is restored to its original position was handed over, consequently the said copy was handed over to Mr. Bari, Learned Advocate of the Appellant.

The copy of the order dated 08.01.2021 and the note sheet are annexed hereto and collectively marked with the letter 'B'.

(d) It is pertinent to mention here that after restoration of the said land in its original form the official present there delivered the peaceful possession of the land but the appellant refused to sign on the letter of possession and acknowledge the same. As such there is no document signed by the petitioner relating to return back of the land available is in the office record.

However, the petitioner has submitted in paragraph 19 of the W.P. No.3675 (W) of 2020 annexed with the instant application for stay which runs as follows :

"That unless and until this Hon'ble Court specifically direct the respondent Municipality to office employment to the petitioner in lieu of such land in question which the petitioner is ready and willing to return back to the Municipality, your petitioner will

*suffer irreparable loss and injury”.
The deponent craves leave to refer
the said writ petition at the time of
hearing, if necessary”*

A copy of the report has been made over to the appellant in course of the hearing.

The report shows that the land in question had been handed over to the appellant and the municipality is not desirous to utilise the said land.

It, further, appears that in spite of the return of the said land, the appellant refused to sign the letter of delivery of possession and acknowledge the same.

The learned Single Judge, in our view, rightly held that the right of the appellant accrued only when the municipality took possession of the land for their own purpose and the said right stood extinguished when the land was returned back to the appellant following the order passed on November 8, 2017. The appellant did not challenge the said order. It is not in dispute that he received the rent compensation of Rs. 69,000/- in terms of the said order.

We see no reason to interfere with the order under appeal.

We also do not see any discrimination as urged by the appellant because it is not the case of the appellant that the lands of the said three persons had also been returned back by the municipality. The

appellant does not stand on the same footing with those persons.

The appeal being FMA 1176 of 2021 is, accordingly dismissed along with connected applications being I.A. CAN 1 of 2021 and I.A. CAN 2 of 2021 without any order as to costs.

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.)