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2021

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
(Via Video Conference)**

W.P.A. No.9719 of 2020

**Tapan Kanti Bera
Versus
The State of West Bengal and others**

Mr. Somnath Roy Chowdhury,
Ms. Arpita Roy Chowdhury.
...for the petitioner.

Mr. Ashim Kumar Ganguly.
...for the respondent nos.1, 2, 4, 5 and 6.

Ms. Sukla Das Chanda.
...for the State.

Mr. Arjun Ray Mukherjee.
...for the respondent no.3.

The petitioner is the co-owner of a brick kiln, the operation of which was stopped by an order of the National Green Tribunal, Principal Bench, New Delhi dated September 4, 2020. By the said order, it was observed that the State Pollution Control Board, vide order dated March 20, 2020, was directed to inspect the unit in question, verify on the factual aspect and to submit a report; in pursuance of the direction, report was filed by the SPCB stating that the brick kiln was found to be running without obtaining consent to establish and consent to operate from the Board and,

therefore, order of closure and disconnection of electricity was issued against the brick kiln by order dated July 8, 2020. The National Tribunal further observed that the action taken was appropriate, however, directing the SPCB further to assess the environmental compensation in accordance and with the guidelines framed by the CPCB and recover the same from the respondent after following the due process within one month from the said date.

The present grievance of the petitioner, who was one of the co-owners of the brick kiln, is that, as per the Division Bench judgment of this Court rendered on August 4, 2017 in W.P. 12249(W) of 2017, the owner of a brick kiln, who is running the brick kiln in contravention of law, cannot claim any legal right to reap the benefit of an illegal act and be heard to say that the owner is entitled to dispose of the bricks so manufactured by sale or otherwise and enjoy the usufructs. The Division Bench further granted liberty to the District Land and Land Reforms Officer concerned to auction the bricks manufactured in the unit of the petitioners therein as early as possible but not later than two months from the date of receipt of the copy of that order and the sale proceeds of such auction was directed to be donated to the Chief Minister's Relief Fund.

It is submitted on behalf of the respondent no.3, that is, the West Bengal Pollution Control Board, that the private respondent subsequently filed an application for modification of its order. However, learned counsel for the petitioner submits that such application has already been disposed of.

It is submitted on behalf of the respondent nos.1, 2, 4, 5 and 6 that the order of the Tribunal has already been complied with and files a compliance report in that regard.

Be that as it may, it is clear from the order of the Division Bench, cited by the petitioner, that a binding precedent has been laid down therein as regards owners of an illegally operating brick kiln not being entitled to reap the usufructs of the brick manufactured during illegal operation of the brick kiln. Such precedent is binding on this Court as well.

As such, W.P.A. No.9719 of 2020 is disposed of by directing the respondent no.4, that is, the District Land and Land Reforms Officer, Purba Medinipur to immediately enquire and assess the quantity of bricks and other allied products manufactured by the brick kiln-in-question during its period of illegal operation, as per the observation of the Tribunal. The respondent no.4 shall thereafter put up such products, if any, for auction sale and forward the proceeds of such sale, upon deducting the expenses of

the process of auction, to any fund created by the State Government to deal with the current pandemic situation. Such process shall be completed as early as possible, positively within two months from this date. The respondent no.4 shall be entitled to obtain adequate protection from the police to ensure that the products manufactured by the unit-in-question during the period of illegal operation are not encumbered and/or transferred in the meantime. If so approached, the police shall afford necessary protection in that regard.

There will be no order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)