

36 15.01.2021

Ct. No. 02

akd

M.A.T. 840 of 2020

With

CAN 1 of 2020

(Through Video Conference)

***The Competent Authority, office at Urban
Development Department, (M.D. Branch) Nagarayan***

Vs.

Pinky Roy & Ors.

Mr. Abhratosh Majumdar,

Mr. Md. T. M. Siddiqui,

Mr. Nilotpall Chatterjee.

... for the appellant.

We were perplexed at the outset whether the appellant can be said to be an aggrieved party after the compliance of the order impugned in the instant appeal within the time indicated therein.

By the impugned order a direction was given upon the respondent no. 3 to publish the fresh final statement under Section 9 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'the said Act') in respect of the estate of the writ petitioners by excluding the ponds and water bodies within January 15, 2021. The communication dated 11th January, 2021 issued by the competent authority is handed over to us evincing that the fresh final statement under Section 9 of the said Act has already been made and because of such fact we are constrained to record our observation in the opening paragraph of this order.

Let the communication date 11th January, 2021 be kept with the record.

However, Mr. Abhratosh Majumdar, learned Additional Advocate General, invited our attention to the adverse remarks made in the impugned order and the costs was imposed to realize from him

personally, which according to him, shall be treated as a stigma and would have severe impact on his service career. Mr. Majumdar has submitted that though the order of the respondent no. 2 was communicated to the respondent no. 3, but the entire papers were lying in the Court of 8th Metropolitan Magistrate, Kolkata and, therefore, the delay, which was caused, cannot be attributed to the negligence of the said respondent no. 3.

Despite service there is no representation on behalf of the respondents.

Since the scope of the appeal is squeezed within a limited compass without affecting the substantive right of the writ petitioners/respondents, we have no hesitation to proceed with the instant appeal on such limited scope.

Though there is a categorical finding recorded in the impugned order on the lapses and negligence of the respondent no. 3 in complying the order passed in an earlier round of litigation by the competent authority, i.e. the respondent no. 2, but the explanations offered by the said respondent through Mr. Majumdar appears to us satisfactory.

There was a procedural glitch because of unavailability of the relevant documents, as those documents were lying in the Court obviously in the context of some litigation and we can very well perceive that retrieving such documents and bring it back for the purpose of compliance remains a cumbersome procedure. Equally we cannot overlook that there has been a considerable delay in acting in terms of the orders passed in an earlier round of litigation and constrained the writ petitioners to launch second round of litigation before the Court. Therefore, imposition of costs appears to us

inevitable.

However, considering the plausible explanations offered by the said respondent no. 3, we feel that the order impugned needs to be modified to the extent that such costs shall not be realized personally from the said respondent no. 3 but from Government exchequer.

Since Mr. Majumdar holds a high position as Additional Advocate General, we expect that he shall ensure the payment of such costs within two weeks from date.

On such modification, the appeal is disposed of.

(Harish Tandon, J.)

(Kausik Chanda, J.)