

15.02.2022
Item No. 17
Court No.6.
S. De

Through Video Conference

**M.A.T. 83 of 2022
I.A. No. CAN 1 of 2022**

**Hamid Sha @ Abdul Hamid Sha & Ors.
Vs
State of West Bengal & Ors.**

Mr. Prosenjit Mukherjee,
Mr. Saptarshi Chakrabarty,
...for the appellants.
Mr. Raj Kr. Sain,
...for the respdt. nos. 10, 11, 12.

By consent of the parties the appeal and the connected application are taken up together for hearing.

This is an appeal directed against an order dated January 4, 2022 whereby W.P.A. 18259 of 2019 was disposed of.

The writ petitioners/respondents approached the learned Single Judge alleging that the private respondents in the writ petition who are the appellants before us had made unauthorized construction on P.W.D. land. They said that they had made a representation to that effect before the concerned authorities but such representation has not yet been considered. The learned Judge disposed of the writ petition by directing the 6th respondent (Executive Engineer, P.W.D. (Roads), Tamluk Highways Sub-

Division, to consider and dispose of the representation submitted by the writ petitioners on May 27, 2019 after giving reasonable opportunity of hearing to all the affected parties including the petitioners and the private respondents.

The appellants say that the writ petition had initially been listed before a learned Single Judge who released the matter from His Lordship's list on September 30, 2019 for want of determination observing that it was a writ petition that should be classified under Group-I(f) and His Lordship did not have determination to hear matters pertaining to such group. The grievance of the appellants is that the matter was listed before another learned Judge but no notice thereof was served on the appellants. As a result, the appellants could not be represented before the learned Judge who disposed of the writ petition by the order impugned.

We have seen the order under appeal. It prejudices nobody. While it is true that principles of natural justice must be observed strictly, the same is not a straitjacket formula. Some element of prejudice must be demonstrated by the party alleging breach of the principles of natural justice. By the order impugned the learned Judge has directed the concerned Executive Engineer to grant opportunity of hearing to all the concerned parties including the

present appellants. It is not that any action was directed to be taken behind the back of the appellants.

We are of the view that no prejudice has been caused to anybody by the order assailed before us. The appellants say that the writ petitioners have made unauthorized construction on a water body. The appellants will be at liberty to draw the attention of the concerned Executive Engineer to the factum of such alleged unauthorized construction on water body and the Executive Engineer may consider the same if the same falls within his authority or jurisdiction. We see no reason to interfere with the order under appeal. We, however, reiterate that all affected parties including the writ petitioners and the private respondents must be given due opportunity of hearing before the Executive Engineer passes any order or takes any action in the matter.

Accordingly, the appeal being MAT 83 of 2022 is disposed of along with the connected application being I.A. CAN 1 of 2022.

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.)