

16.
01-03-2022
debajyoti
(Ct. no.06)

MAT 131 of 2022
with
IA NO:CAN/1/2022

Sri Susanta Kumar Das
Vs.
The State of West Bengal & Ors.

Mr. Prasanta Kumar Pakrashi,
Mr. Biswaranjan Bhakat

... For the Appellant.

Affidavit-of-service filed in Court today be taken on record. In spite of service, nobody appears for the respondents.

The writ petitioner had on an earlier occasion filed a writ petition being WPA 12648 of 2021 (Susanta Kumar Das -Vs.- The State of West Bengal & Ors.) being aggrieved by an order dated July 29, 2021, passed by the Sub-Divisional Magistrate, Ghatal under the provisions of Section 10(3) of the West Bengal Highways Act, 1964.

Thereafter he preferred an appeal before the District Magistrate, Paschim Medinipore challenging the said order.

Learned Single Judge of this Court by an order dated August 12, 2021, declined to pass any interim order in the said writ petition. The learned Judge, however, disposed of the said writ petition directing that the appeal should be disposed of by the District Magistrate, Paschim Medinipore within a period of one month from the date of communication of the order.

It, further, appears that after the said order dated August 12, 2021, was passed, the appeal preferred by the writ petitioner before the District Magistrate was dismissed on August 24, 2021.

The appellant has again approached this Court by way of the present writ application challenging the said order passed by the District Magistrate, Paschim Medinipore.

By the order impugned, the learned Single Judge dismissed the writ petition observing as follows:

“ It appears that the petitioner filed an earlier writ petition being WPA 12648 of 2021 over the same issue which was disposed of by a co-ordinate Bench of this Court by an order dated 12th August, 2021. The petitioner submits that the grievance of the petitioner was not considered by the Court in the said order.

Having considered the fact that identical writ petition was considered and disposed of by a co-ordinate Bench of this Court earlier, this Court is of the view that the petitioner's remedy lay before the Hon'ble Division Bench in appeal and a fresh writ petition on the same cause of action is not maintainable.

Accordingly, WPA 17778 of 2021 is dismissed, being not maintainable.

However, there shall be no order as to costs. ”

We are of the view that the learned Judge was not justified in holding that remedy of the writ petitioner lies in preferring an appeal, challenging the order dated August 12, 2021, passed in WPA 12648 of 2021. The subject matter of challenge in the earlier

writ petition was the order dated July 29, 2021, passed by the Sub-Divisional Magistrate, Ghatal, while the subject matter of challenge in the present writ petition is the order of District Magistrate dated August 24, 2021.

The learned Judge ought to have examined the propriety of the order of the District Magistrate dated August 24, 2021, and disposed of the writ petition accordingly.

In that view of the matter, the order impugned is set aside. The writ petition is remanded back to the learned Single Judge having determination to take up the matter for hearing afresh.

The appeal and the connected application are disposed of.

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

(Kausik Chanda, J.) (Arijit Banerjee, J.)