

January 19, 2022
Sl. No.14
Court No.1
SG/s.biswas

FMA 458 of 2021
with
CAN 1 of 2021
+
CAN 2 of 2021

Abala Sarkar and others
vs.
Dipankar Roy and others
(Through Video Conference)

Mr. Ramkrishna Bhattacharya,
Ms. Busra Khatun,
Mr. Kaushik Chaudhury, Advocates
.....for the appellants
Mr. Susovan Sengupta,
Mr. Srikanta Paul, Advocates
... for the State
Mr. Niladri Shekhar Ghosh,
Mr. Sakhawat Khandakar,
Mr. Md. Nazar Chowdhury,
Ms. Sompurna Chatterjee, Advocates
... for the respondent No.1/writ petitioner

CAN 1 of 2021 has been filed to condone the delay of
364 days in filing the appeal.

Having considered the plea of lockdown and
restrictions imposed on account of COVID-19 pandemic,
we are of the opinion that the delay has been sufficiently
explained. Hence CAN 1 of 2021 is allowed and delay in
filing the appeal is condoned.

Heard on merit.

This appeal is directed against the order of learned
single Judge dated 13.02.2020 whereby WP 16307 (W) of
2019 filed by respondent No.1 herein i.e. the writ
petitioner has been allowed and respondent No.13 herein

has been directed to deploy adequate police force to remove the encroachment from the land in question.

Submission of learned counsel for the appellants is that the disputed questions of fact are involved in the matter and the appellants are residing on the land in question since long, therefore they cannot be removed in such a manner.

Learned counsel for the State has opposed the appeal by submitting that there is no illegality in the order of learned single Judge and it is a Government land and by following the due process as prescribed under Section 26(2) of the Control of National Highways (Land and Traffic) Act, 2002, the action of removal of encroachment has been taken.

Learned counsel for the respondent No.1 has also opposed the appeal by submitting that the appellants have no right and the suit filed by the appellant has already been dismissed for want of jurisdiction by the trial Court. He has also submitted that the present appeal has been filed after the respondent No.1 had filed CPAN 725 of 2020.

Having examined the record, we find that learned single Judge has duly taken note of the fact that in the suit filed by the appellants, the prayer for temporary injunction was rejected and now it has been brought to the notice of this Court by learned counsel for respondent No.1 that the suit itself has been dismissed.

Learned counsel for the appellants has failed to produce any document showing the title of the appellants on the land in question. The land is stated to be the Government land. Record further reflects that the notices in terms of Section 26(2) of the said Act dated 23.08.2018 were issued to the appellants. Section 26 of the said Act provides for removal of unauthorized occupation by the competent authority. Record further reflects that in the process of complying with the provision of Section 26(2) of the said Act, the competent authority of the National Highways had also sought the police force for removal of encroachment.

Learned single Judge has duly taken note of the said communication by the Executive Engineer, National Highways Division to the Superintendent of Police.

In the aforesaid circumstances, it has been found by learned single Judge that the appellants are encroachers on the land in question. In view of the facts noted above, we are of the opinion that learned single Judge has not entered into any disputed question of fact. The plea of the appellants that they are residing on the land in question for several years is of no consequence as nothing has been pointed out to substantiate the same or to point out any right on the land in question.

Hence, we are of the opinion that learned single Judge has not committed any error in issuing the direction for removal of encroachment.

Thus no case for interference is made out. The appeal is accordingly dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]