

05
RP
AN

24.03.2022
Ct. No. 16

MAT 230 of 2021
With

IA No. CAN 1 of 2021
IA No. CAN 2 of 2021

Jharna Samanta
vs.
State of West Bengal & ors.

Mr. Saptangsu Basu, learned Senior Counsel
Ms. Anita Shaw
... for the appellant

Mr. Jahar Lal De
Mr. Shamim Ul Bari
... for the State

Sufficient grounds have been made out in the application, being CAN 2 of 2021, for condonation of delay of 326 days in preferring the appeal. We condone such delay and the application is thus allowed and disposed of.

This intra court appeal is directed against the order dated 4.3.2022 passed in WP No.1994 (W) of 2020. The said writ petition was filed by the appellant praying for issuance of a writ of mandamus to direct the respondent/Executive Engineer, Public Workers Department, Hooghly Construction Sub-Division at Arambagh to rescind/withdraw the notice under Section 10(1) of the State Highways Act, 1964 (in short 'the Act') to prohibit the respondents from proceeding further pursuant to the said notice in respect of the property which has been described in the writ petition. The learned Writ Court found that the lands in question were acquired in the year 1962 and stood vested with the Government free from all

encumbrances. The Court also recorded that the appellant is a subsequent purchaser of the land in issue. Further, compensation which was determined has been paid in favour of the original land owners and they received the compensation without any demur. The learned writ Court has taken further note of the written instruction given to the counsel appearing for the respondent that the process initiated under Section 10 of the 1964 Act was carried to the logical end and an order has been passed by the Sub-Divisional Magistrate, Chandernagore dated 12.02.2020. Further, the Court observed that the order dated 12.02.2020 is only subject to appeal under Section 10(4) of 1964 Act. The decision which was referred to by the appellant before the learned writ Court in WP 21479 (W) of 2019 was distinguished. The learned writ Court after noting the facts finds that the writ petition is barred by the principles of alternative remedy and it did not notice any jurisdictional error on the part of the concerned respondent in taking recourse to the 1964 Act and, accordingly, the writ petition stood dismissed. It appears that the appellant has filed a review application before the learned Single Judge. However, it is not clear as to whether such review application has been entertained as obviously the application was time barred.

Be that as it may, the submission of the learned senior counsel for the appellant that an appeal is pending

before the District Magistrate concerned which, according to the appellant, has been presented on 2.3.2020. As rightly pointed out by the learned Counsel for the respondent that there is no evidence produced by the appellant to show that the appeal was presented on 2.3.2022 nor a copy of the appeal petition has been annexed to the stay petition. In such circumstances, the question would be as to whether we can issue any direction to the concerned District Magistrate to dispose of the appeal when there is no satisfactory proof produced before us that the appeal has been filed in the proper form and the same is still pending before the authority. The larger question would be as to whether a subsequent purchaser could question an acquisition proceeding alleging that the vesting was not in accordance with law without challenging the notification issued under the provisions of the 1964 Act while acquiring land in question. More particularly, the original land owners from whom the lands were acquired have accepted the compensation paid to them. In any event, it is for the appellant to work out his remedy in accordance with law, if according to the appellant, the appeal is still pending before the District Magistrate concerned.

Therefore, we find that there is no error in the order passed by the learned Single Judge and accordingly the appeal fails and is **dismissed**.

In the event, the appeal has been properly filed before the concerned appellate authority and the appeal is found to be maintainable then we direct the concerned authority to

dispose of the appeal in accordance with law within a period of four weeks from the date of receipt of a copy of this order. We further make it clear that this direction is subject to the condition that there is proper appeal petition filed and pending on the file of the concerned authority.

The application being CAN 1 of 2021 is also disposed of.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)