

18.05.2022
Item No.79
Court No.6.
S. De

**M.A.T. 380 of 2019
with
I.A. CAN 1 of 2019
(Old No. CAN/4209/2019)
I.A. CAN 2 of 2020
(Old No. CAN/1978/2020)**

**Ujjal Kumar Mondal
Vs
State of West Bengal & Ors.**

Mr. Gopal Chandra Ghosh,
...for the appellant.

Mr. Soumitra Bandyopadhyay,
Mr. Arunava Maity,
...for the State.

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

The writ petitioner/appellant contends that his land was taken over by the National Highway Authority without paying compensation to him. He initially made a representation dated May 27, 2013 to the Additional District Magistrate (LA), District-Birbhum, for reference of his claim for compensation to the appropriate Court. He says that during the pendency of such representation, being ill-advised, he filed a suit being T.S. No. 165 of 2014 before the Civil Judge, Junior Division, 1st Court, Durgapur claiming compensation. However, by an order dated June 10, 2016 he was permitted to withdraw the suit under

Order XXIII Rule I of the Code of Civil Procedure, without any liberty to file fresh suit in respect of the same cause of action.

Since the representation of the writ petitioner did not receive the attention of the concerned authority, the writ petitioner approached the learned Single Judge by filing W.P.A. 819 (W) of 2019, seeking a direction on the authority to refer the disputes raised by him to the learned District Judge, Paschim Burdwan, for disposal in accordance with law. The learned Single Judge was of the opinion that since the principles in the Civil Procedure Code apply to a writ petition, and since the writ petitioner's title suit was permitted to be withdrawn without granting him leave to file a fresh suit on the same cause of action, the writ petition was also barred by law. Accordingly, the learned Judge dismissed the writ petition by observing that the writ petitioner has abandoned his cause of action while withdrawing the suit.

We have heard learned counsel for the parties. The writ petitioner's representation before the concerned authority was pending when he filed the title suit, obviously under wrong advice. He was thereafter advised to withdraw the title suit. He did so. He did not seek leave to file a fresh suit while withdrawing the said title suit. This did not in our opinion stand in the way of the learned Single Judge

entertaining the writ petition and directing the concerned authority to refer the disputes raised by the writ petitioner to the appropriate Court. The writ petitioner did not approach the learned Single Judge for any order asking for compensation. It was against the alleged inaction on the part of the concerned authority to even consider his representation, that the writ petitioner approached the learned Single Judge.

The order under appeal is set aside. We direct the respondent no.2 to refer the disputes raised by the writ petitioner to the learned District Judge, Paschim Burdwan in accordance with law within four weeks from receipt of a copy of this order. The learned District Judge shall decide the disputes raised by the writ petitioner in accordance with law uninfluenced by any observation in this order.

MAT 380 of 2019 is, accordingly, disposed of along with the connected applications being I.A. No. CAN/1/2019 (Old No.CAN/4209/2019) and I.A. No. CAN/2/2020 (Old No.CAN/1978/2020)

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.

(Subhendu Samanta, J.)

(Arijit Banerjee, J.)