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04-05-2022
debajyoti
(Ct. no.06)

MAT 609 of 2022
+
IA NO:CAN/1/2022
+
CAN/2/2022

Ekramul Kabir & Anr.
Vs.
Md. Subid Ali & Ors.

Mr. Manjit Singh,
Mr. Gaganjyot Singh,
Mr. Biswajit Mal,
Mr. Rishav Kumar Singh
... For the Appellants.

Mr. Md. Subid Ali
... Respondent No.1-in-person.

Re : CAN/1/2022

This is an application for condonation of delay of 12 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

The application being CAN 1 of 2022 is, thus, allowed.

Re : MAT 609 of 2022 & CAN 2 of 2022

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

This appeal is preferred against a judgment and order dated March 08, 2022, whereby WPA 5081 of 2016 was disposed of by giving certain directions. The operative portion of the order under appeal reads as follows:

“ Having heard the learned advocates appearing for the writ petitioners, State respondents as well as the private respondent this Court directs

Pradhan, Mallickpur Gram Panchayat, being the respondent no. 6, to take a decision on the nature of construction as carried out by the respondent no. 8 based on the letter dated 9th August, 2013 issued by the concerned Block Development Officer, and the enquiry report of the Sub-Assistant Engineer dated 24th May, 2013 within a period of eight (8) weeks from the date of communication after granting opportunity of hearing to the writ petitioner and the respondent no. 8 or their representatives and pass a reasoned order. The order to be passed by the respondent no. 6 in terms of the order passed by this Court shall be communicated to the petitioner and the respondent no. 8 within one week thereafter.

It is made clear that if Pradhan comes to a conclusion that the issue involved in this writ petition cannot be decided by him but it should be decided by the concerned Zilla Parishad South 24 parganas, he shall pass necessary order and forward the issue to the concerned authority of the Zilla Parishad, South 24 Parganas within the aforesaid period and if the issue is forwarded to the Zilla Parishad the appropriate authority of the Zilla Parishad is directed to take a decision within four weeks from the date of receipt of communication from the respondent no. 6.

It has been made clear that if the concerned authority finds that the construction has been carried out by the respondent no. 8 unauthorisedly necessary order to be passed in accordance with law for demolition of such construction. ”

Being aggrieved, the respondent nos.7 and 8 have come up in appeal before us.

The writ petitioner and the appellants are neighbours. The allegation of the writ petitioner is

that the appellants have made construction without keeping adequate space between his building and the building that the appellants have constructed, encroaching on public and private passages. The appellants say that they have made the concerned construction strictly adhering to the sanctioned plan, which contemplates a two-foot passage between the two buildings.

We are not inclined to go into the merits of the case. The learned Judge has directed the Pradhan of the concerned Panchayat to take a reasoned decision in accordance with law. We only clarify that in the event the Pradhan or the Zilla Parishad, as the case may be, is of the opinion that the construction made by the appellants is in accordance with the sanctioned plan, naturally, no action will be taken against them. Even if it is found that there are some deviations from the sanctioned plan, the Pradhan will consider whether as per the applicable rules, such deviation can be regularized. Only if the rules do not permit regularization of such unauthorized construction, will the question of demolition arise.

We have not gone into the merits of the case at all. The Pradhan or the Zilla Parishad, as the case may be, shall take a reasoned decision in terms of the order of the learned Single Judge.

The appeal and the connected application are, accordingly, disposed of.

Affidavits not having been called for, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

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

(Kausik Chanda, J.)

(Arijit Banerjee, J.)