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08.07.2022
Ct. No.10
b.das

WPA 12765 of 2022

Ramdeb Shaw
Vs.
The State of W.B. & Ors.

Mr. Debasish Das ...for the petitioner.

Mr. Jayanta Das
Ms. Soumita Ghosh ...for the respondent No.16.

Mr. Susovan Sengupta
Mr. M. K. Sadhu ...for the State.

Affidavit of service filed on behalf of the petitioner is taken on record.

Heard learned counsels for the parties.

The order issued by the Assistant Engineer PWD, Contai Sub-division passed on 23rd June, 2022 is under challenge in this writ petition.

It is contended on behalf of the petitioner that proceedings under Section 10 of the West Bengal Highways Act, 1964 was initiated against the petitioner on the allegation of encroachment of the highway by the petitioner.

The order of the Executive Magistrate passed on 2nd November, 2020 was challenged by the petitioner before a co-ordinate Bench of this Court. The writ petition was dismissed by the co-ordinate Bench on the ground of alternative remedy available to the petitioner. The said

order was carried in appeal by the petitioner and the Hon'ble Division Bench of this Court disposed of the appeal granting opportunity to the petitioner to file appeal before the appellate authority under Section 10(4) of the Act of 1964 and directing the authority to dispose of the appeal within a stipulated time frame. During pendency of the appeal before the Sub-divisional Magistrate, Egra, Purba Medinipur, an order was issued for demolishing the unauthorised construction/obstruction made by the petitioner in the plot in question.

The said order was challenged by the petitioner before this Court and by an order dated 14th March, 2022 in WPA 3396 of 2022 this Court directed the concerned authority to dispose of the appeal on merits after giving sufficient opportunity of hearing to all the interested parties including the petitioner and the private respondent within a period of one month from the next date of hearing. An order of status quo was granted by the Court in respect of the nature and character of the property in question upon both the parties as on date of order till one week of the disposal of the appeal.

By an order dated 25th May, 2022, the District Magistrate, Purba Medinipur refused to admit the appeal on the ground that it was filed clearly after expiry of the time stipulated by this Court. Subsequently, the notice impugned dated 23rd June, 2022 was issued upon the petitioner.

It is submitted on behalf of the respondents that the appeal filed by the petitioner was in violation of the direction of the Hon'ble Division Bench of this Court, which directed the petitioner to prefer the appeal within a period of two weeks from the date of the order.

According to learned counsels, the appeal was filed even after the statutory period of time laid down in the Act of 1964 and there is no illegality or irregularity in the order impugned that requires interference.

Learned counsel for the State respondents further submits that the Act of 1964 being a special statute, provisions of the Limitation Act is not applicable herein.

It transpires from the documents on record that by an order dated 23rd November, 2021, in MAT 841 of 2021, the Hon'ble Division Bench of this Court granted opportunity to the appellant to avail remedy of appeal by filing the appeal before the appellate authority in terms of Section 10(4) of the 1964 Act. The relevant portion of the order is reproduced below:

“Hence, the present appeal is disposed of granting liberty to the appellant to avail the remedy of appeal by filing the appeal before the appellate authority in terms of Section 10(4) of the Act. If such an appeal is filed by the appellant within a period of two weeks from today then the same will be considered and decided by the appellate authority in accordance with law as expeditiously as possible preferably within a period of three months from the date of filing of the appeal.”

The Hon'ble Division Bench, in the said order, has clearly and unambiguously spelt out that if the appeal was filed within a period of two weeks from the date of the

order, then the same would be considered and decided by the appellate authority preferably within a period of three months from the date of filing of the appeal. The said lines do not by way of any interpretation indicate that there was a mandate upon the petitioner to file appeal within a period of two weeks from the date of the order.

It was only held that in the event on filing of the appeal within two weeks, the same would be disposed of within three months thereafter. Therefore, it can under no circumstances be said that the appeal was preferred by the petitioner beyond the time limit set out by the Hon'ble Division Bench or in violation of the directions of the Hon'ble Division Bench.

During pendency of the said appeal, the petitioner filed a writ petition before this Court for the reason that the concerned authority being the Sub-divisional Magistrate, Egra, Purba Medinipur issued an order dated February 16, 2022, that is, during pendency of the appeal before the authority, for demolition of the unauthorised construction allegedly made by the petitioner.

This Court being informed that the next date of hearing of the appeal was fixed on April 28, 2022, the concerned authority was directed to dispose of the appeal on merits after giving sufficient opportunity of hearing to all the interested parties including the petitioner and the private respondent within a period of one month from the next date of hearing.

By the order dated 25th May, 2022, the District Magistrate, Purba Medinipur refused to admit the appeal on the ground of the appeal being preferred after expiry of time stipulated by the Hon'ble Court, despite the fact that no such time for filing of the appeal was mandated by the Hon'ble Division Bench.

Moreover, the direction of this Court for disposal of the appeal on merits was also not complied with by the concerned authority, who chose to discard the appeal at the threshold on a wrong interpretation of the order of this Court.

In view of the same, as the concerned authority has failed to comply with the order of this Court directing disposal of the appeal on merits, the order dated 25th May, 2022 passed by the District Magistrate, Purba Medinipur, as well as the notice dated 23rd June, 2022 issued in consequence of rejection of the appeal are required to be set aside/quashed.

Accordingly, the order dated 25th May, 2022 passed in appeal No.18 (AO) of 2021 and the order passed by the Assistant Engineer PWD, Contai Sub-division on 23rd June, 2022 are set aside/quashed.

The District Magistrate, Purba Medinipur, being the 14th respondent herein, is directed to consider and dispose of the appeal on merits within two months from the date of communication of this order after affording reasonable opportunity of hearing to all the interested parties

including the petitioner and the private respondent, in accordance with law.

Let there be an order of status quo in respect of the nature, character and possession of the property in question upon both the parties as on this date till one week after disposal of the appeal.

With the above observations and directions, the writ petition being WPA 12765 of 2022 is disposed of.

However, there shall be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)