

12. 24.08.2022
Ct. No.6
Tanmoy

M.A.T. 1010 of 2022

Madhab Chandra Gucchait
-Versus-
The State of West Bengal & Ors.
With
IA No: C.A.N. 1 of 2022
With
IA No: C.A.N. 2 of 2022

Mr. Salil Kumar Maiti, Adv.,
Ms. Pinki Saha, Adv.

...for the appellant.

Mr. Prasanta Kumar Giri, Adv.,
Ms. Bineeta Bhattacharjee, Adv.

...for the State respondents.

Mr. Golam Mastafa, Adv.,
Mr. Tarasankar Samanta, Adv.

...for the respondent nos. 9 to 14.

Affidavit of service filed in Court today be kept with
the records.

In Re: IA No: C.A.N. 1 of 2022.

This is an application for condonation of delay of
twenty (20) days in filing the appeal, as noted by the
Stamp Reporter. Causes shown being sufficient, the
delay is condoned. The application being IA No: C.A.N.
1 of 2022 in M.A.T. 1010 of 2022 is disposed of.

In Re: M.A.T. 1010 of 2022
With
IA No: C.A.N. 2 of 2022

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

The appellant's writ petition being W.P.A. No. 4941 of 2022 was disposed of by the judgment and order dated May 12, 2022, which is the subject-matter of challenge in this appeal.

The appellant had approached the learned Single Judge with the grievance that the private respondents and their associates had erected a concrete bench on his property and used the same for various purposes including playing cards. He further said that once the Panchayat Authorities had demolished the structure, but the private respondents reconstructed the structure on the very next day which was of a bigger size. His subsequent complaints to the Panchayat Authorities were not responded to. Hence he was before the learned Single Judge.

The private respondents submitted before the learned Judge that the local villagers had constructed a concrete bench over Government land which is used as a village pathway and the land does not belong to the writ petitioner.

The learned Judge observed that the question of encroachment or title over the land on which construction has been allegedly made, cannot be decided by the writ Court or by the Panchayat Authorities. For that purpose, the writ petitioner is at liberty to approach the civil Forum.

However, the Panchayat Authority was directed to dispose of the writ petitioner's representation by passing a reasoned order. It was further directed that the reasoned order shall state whether the structure has been permitted to be constructed on a village road and whether such construction would require any permission from the Panchayat Authorities or not.

As regards the allegation of public nuisance being committed in front of the writ petitioner's house, the writ petitioner was granted liberty to approach the appropriate Authority.

Being aggrieved, the writ petitioner is before us by way of this appeal.

Learned Advocate for the appellant/writ petitioner says that under Section 23(6) of the West Bengal Panchayat Act, 1973, nobody can make any construction of any structure without obtaining prior permission from the local Panchayat. In this case, no permission has been obtained from the Panchayat by the private respondents. Hence the structure must be demolished immediately.

We, sitting in writ appeal, are not in a position to decide disputed questions of fact. It is for the local Government Body to look into the matter and find out if there is any unsanctioned construction and take appropriate steps in the matter. We are of the considered view that the learned Single Judge was perfectly justified

in passing the order which is sought to be assailed before us. We find no reason to interfere with the order under appeal. However, we direct the respondent Authorities to act in terms of the learned Single Judge's order immediately and give effect to that order upon being communicated by the appellant/writ petitioner.

The appeal being M.A.T. 1010 of 2022 and the connected application being IA No: C.A.N. 2 of 2022 are disposed of.

Let urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with all necessary formalities.

(Rai Chattopadhyay, J.)

(Arijit Banerjee, J.)