

D/L
Item No. 28
02.08.2022
KOLE

MAT 1074 of 2022
With
IA No. CAN 1 of 2022
With
IA No. CAN 2 of 2022
Dr. Chira Ranjan Biswas & Anr.
-Vs.-
The Chairman, Kamarhati Municipality & Ors.

Mr. Bhagat Choudhury,
Mr. M. Chatterjee

...for the appellants.

Mr. Sankha Subhra Ray,

...for the Municipality.

Mr. Amber Majumdar,
Mr. P. Kr. Chatterjee,
Mr. A. Sarkar,

...for the respondent no. 4.

In Re: CAN 1 of 2022

This is an application for condonation of delay of 67 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

CAN No. 1 of 2022 is accordingly disposed of.

In Re: MAT 1074 of 2022 with IA CAN 2 of 2022

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

This appeal is directed against a judgment and order dated April 1, 2022, whereby the learned Single Judge disposed of WPA No. 11566 of 2020 by giving certain directions.

The appellants/writ petitioners had approached the learned Single Judge with the grievance that the private

respondent no. 4 was making unauthorized construction on the concerned land and all the complaints made by the appellants to Kamarhati Municipality were in vain. The learned Judge observed that factual disputes are involved which cannot be decided conveniently by the Writ Court and it is also not within the domain of the Writ Court to come to a finding whether a particular construction has been made in violation of a sanctioned plan or not. The learned Judge disposed of the writ petition by giving the following directions:-

- a) An inspection of the premises shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent no.4, within three weeks. Advance notice of the inspection shall be served upon the petitioners and the respondent no.4. If the parties are not available to accept notice, the authorities shall affix the notices of hearing and inspection at conspicuous places in their respective premises.*
- b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and was continuing, the authorities may take interim measures by stopping such construction.*
- c) A report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.*
- d) Such report shall be handed over to the parties.*

e) A hearing shall be given to the petitioners and the respondent no.4. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions, before the competent authority. All points raised by the parties shall be decided. All documents filed by the parties, if any, shall be exchanged.

f) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion, in terms of the statute.

The court has not gone into the merits of the claims and counter-claims of the parties and the issues involved shall be decided independently. The question of title, boundary dispute and allegation of encroachment shall not be gone into.

The entire exercise shall be completed within a period of four months from the date of communication of this order.”

The appellants/writ petitioners say that the documents on record will clearly demonstrate that the private respondent no. 4 has made unauthorized construction. Moreover, they are not allowed to participate in the proceedings before the Municipal Authority although the learned Single Judge directed that they would be entitled to participate.

We are not inclined to entertain this appeal. The appellants say that the private respondent has made unauthorized construction. The private respondent says that

he has made the construction strictly in accordance with the sanctioned plan. The writ court cannot decide such an issue. The Municipal Officers are experts to deal with such issues. Hence, in our opinion, the learned Single Judge has rightly relegated the matter to the Municipal Authorities. We see no infirmity in the order assailed before us.

However, we make it clear that the appellants will be entitled to place their entire case before the Municipal Authorities and will be entitled to participate in the proceedings before the Municipal Authorities to the fullest extent. Although the appellants say that the Municipal Authorities are in cahoots with the private respondent, we do not take such submission into cognizance. We are confident that being a statutory authority, the Municipality will discharge its functions and carry out the learned Single Judge's order fairly, impartially and efficiently.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Rai Chattopadhyay, J.) (Arijit Banerjee, J.)