

31.08.2022
Item No.5
Court No.6.
S. De

M.A.T. 1227 of 2022
I.A. No. CAN 1 of 2022

Sri Arabinda De & Ors.
Vs
Uluberia Municipality & Ors.

Mr. Aniruddha Chatterjee,
Ms. Trini Joarder,
...for the appellants.
Mr. Buddhadeb Ghoshal,
Mr. Prabhat Kumar Singh,
...for the respondent no. 3/writ
petitioner.
Mr. Gobinda Chandra Bandyopadhyay,
...for the Uluberia Municipality.

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

This appeal is directed Against a judgment and
order dated July 7, 2022, whereby W.P.A. 18760 of
2019 was disposed of. The operative portion of the
said judgment and order reads as follows :-

*“There is already a water
connection in the said premises.
The municipal authority is
accordingly directed to arrange for a
separate water line from the
existing water connection at the
portion of the premises which the
petitioner is occupying.*

*The aforesaid arrangement shall
be made subject to compliance of
necessary formalities by the*

petitioner and upon payment of such fees as may be directed to be paid by the Municipality.

The Municipality shall intimate the petitioner the requisite formalities that are to be complied with by him and the fees that is to be paid by him within a period of seven days from date.

Upon compliance of all necessary formalities and upon payment of the requisite fees, the Municipality shall made arrangement for providing the water connection as indicated hereinabove positively within a period of two weeks thereafter.

The private respondents are restrained from obstructing the men and agents of the Municipality at the time of giving the water connection in favour of the petitioner.”

The writ petitioner and the present appellants are co-owners of a particular property under the jurisdiction of Uluberia Municipality. There are various occupants of the property. The writ petitioner approached the learned Single Judge with a grievance that water supply to his portion was being interfered with by the private respondents in the writ petition who are the appellants herein. He prayed for an order directing the Municipality to provide separate water

connection to the portion of the premises occupied by him. The Municipality objected to such prayer. The private respondents also strongly opposed such prayer. However, the learned Single Judge disposed of the writ petition by giving directions as noted above. Being aggrieved, the private respondents have come up in appeal.

Learned advocate appearing for the appellants says that an opportunity ought to have been given to the respondents in the writ petition to file their affidavits to bring on record the actual state of affairs. There is, in fact, no interference with supply of water to the portion of the premises occupied by the writ petitioner. All the occupants of the said premises are being supplied water through the water connection that is admittedly there. At the highest, there may be a dispute between the writ petitioner and the present appellants which is purely civil in nature.

Learned advocate for the Municipality supports the appellants and says that there is no scarcity of water at the concerned premises and the writ petitioner is getting adequate supply of water. Learned advocate says that the Municipality should have been permitted to file affidavit.

Since factual disputes are also there, we are of the view that the parties should have been allowed to file affidavits before the writ petition was disposed of.

Accordingly, without going into the merits of the matter and without deciding anything on merits, we remand the matter to the learned Single Judge having determination to hear the matter afresh after exchange of affidavits in the manner indicated hereafter.

The respondents in the writ petition will be at liberty to file their affidavits-in-opposition within two weeks from date. Reply, if any thereto, be filed within a week thereafter.

The parties will be at liberty to request the learned Single Judge to hear out and dispose of the writ petition at an early date to the extent the business of the Court may permit.

The order under appeal is set aside.

Since we have not called for affidavits, the allegations contained in the stay petition are deemed not to be admitted by the respondents.

The appeal being MAT 1227 of 2022 is, accordingly, disposed of along with the application being I.A. No. CAN 1 of 2022.

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.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)