

December 5, 2022
Item No. 12
Court No.1
PA(RB)

IA NO: CAN/4/2022
in
MAT/1292/2022

Prasanta Kumar Hait and Ors.
vs.
The State of West Bengal and Others

Mr. Rabindra Narayan Dutta,
Mr. Debasis Sur,
Mr. Hare Krishna Halder,
Mr. Himadri Sekhar Paul
Ms. Piyeta Bhattacharjee,
Mr. Debottam Das, Advocates
... for the Applicant

Mr. Prosenjit Mukherjee,
Mr. Arghya Kamal Das, Advocates
...for the Respondents/Appellants.

Mr. Jahar Lal De,
Mr. Supratim Dhar, Advocates
... for the State

Mr. Gautam Banerjee, Advocate
... for the respondent no. 5

This Court by order dated 17th of August, 2022 had dismissed MAT 1292 of 2022.

CAN 4 of 2022 has been filed by one of the respondents in the writ petition seeking recall of the above order of this Court dated 17th of August, 2022.

Submission of learned counsel for the applicant is that learned Single Judge while passing the order dated 14th of January, 2021 in WPA 19381 of 2019 was having the determination to hear the writ petition relating to panchayats whereas the writ petition in question was falling under the Residuary Matter in Group-IX, therefore, order of the learned Single Judge was without

jurisdiction. In support of his submission, he has placed reliance upon the judgments of the Hon'ble Supreme Court in the matter of **United India Insurance Co. Ltd. vs. Rajendra Singh and Others** reported in **AIR 2000 SC 1165**, in the matter of **State of Uttar Pradesh and Others vs. Neeraj Chaubey and Others** reported in **(2010) 10 SCC 320** and the order of the Hon'ble Supreme Court dated 7th of December, 2011 in the matter of **State of Punjab vs. Davinder Pal Bhullar & Ors. etc.** in **Criminal Appeal Nos. 753-755 of 2009**.

Having heard the learned counsel for the applicant and on perusal of the record, it is noticed that the writ petition was filed before the learned Single Judge challenging the notice dated 30th of August, 2019. It was a notice issued by the Gram Panchayat informing the writ petitioner that he was raising an illegal construction on the illegal land. Learned Single Judge by order dated 14th of January, 2021 had disposed of the petition with certain direction to ensure that there is no encroachment of the PWD land. In the Rules relating to application under Article 226, under Group-V matters relating to municipalities, cooperative societies and panchayats are included. Hence, learned Single Judge had the determination to hear the writ petition. Hence, the applicant is not entitled to the benefit of the judgments he is relying upon in respect of non est nature of the order passed by a Bench having no determination.

We also find that MAT 1292 of 2022 was filed by persons who were not a party in the writ petition and the appellants had questioned consequential action of issuance of notice under Section 10(1) of the West Bengal Highways Act, 1964 and therefore, this Court had examined the correctness of the said notice and dismissed the appeal.

In the above circumstances, no case is made out to recall the order of this Court dated 17th of August, 2022 passed in MAT 1292 of 2022.

CAN 4 of 2022 is accordingly rejected.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]