

15.09.2022
Item No.2
Court No.6.
AB

**F.M.A. 1088 of 2022
With
I A CAN 1 of 2022**

**Sri Manoranjan Tripathi
Vs
The State of West Bengal & Others**

Mr. Mukteswar Maity ...for the Appellant.

Mr. Uttam Kr. Bhattacharya
...for the Zilla Parishad
/Respondent No.9.

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

From the affidavit of service, it appears that the respondents have been served. However, only the Zilla Parishad is represented.

The Judgment and Order dated July 15, 2022, whereby the appellant's writ petition being W.P.A. 4577 of 2018 was disposed of, is under challenge in the present appeal.

The appellant/writ petitioner contends that a concrete road has been built over his land purportedly under the MGNREGA Scheme but in fact in breach of such scheme. With this grievance, he had approached the Additional District Programme Coordinator, MGNREGA, who is the Additional District Magistrate (General), Purba Medinipur, (in short "ADM"). By an order dated May 30, 2017, the said Officer held that the concerned land being R.S. Plot No.650 and L.R.

Plot No.640 is not Government land and it is the appellant's private land. He, accordingly, directed the Pradhan of the concerned Gram Panchayet to remove the concrete road from the appellant's landed property.

It appears that subsequently, at the instance of the Pradhan of the concerned Gram Panchayet, the ADM decided to re-hear the matter. A notice of re-hearing dated March 27, 2018 was issued by the ADM.

Being aggrieved by non-implementation of the ADM's order dated May 30, 2017 and by the notice dated March 27, 2018, whereby the ADM proposed to re-hear the matter, the appellant approached the learned Single Judge by filing the present writ petition.

The learned Judge observed that there were certain questions of fact regarding alteration of land records. The learned Judge noticed that insofar as the dispute regarding land records is concerned, the writ petitioner has a remedy under the West Bengal Land Reforms Act. His Lordship further observed that no prejudice would be caused to the writ petitioner if he participates in the re-hearing. Accordingly, the writ petition was disposed of by granting certain liberties to the writ petitioner.

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

We have heard Mr. Maity, learned Advocate for the appellant and also Mr. Bhattacharya, learned Advocate for the Zilla Parishad. We are in agreement

with the learned Single Judge that no harm will be caused to the appellant if he participates in the re-hearing. We grant him liberty to urge all points available to him in law and in the facts of the case before the ADM including the point that the construction of the concrete road has been made in breach of the terms and conditions of the MGNREGA Scheme. He will also be entitled to contend that once the matter was heard and decided by the ADM by the earlier order dated May 30, 2017 in the presence of all concerned parties, there can be no occasion and no legitimate reason for reopening the matter and holding a fresh hearing.

The Competent Authority shall now issue fresh notice of re-hearing giving at least 7 days' time. Needless to say that the principles of natural justice will be observed by the Competent Authority. The Authority shall pass a reasoned order in accordance with law. The entire exercise should be completed within two months from the date of receipt of copy of this order. Needless to say, if the appellant is aggrieved by the order that the Competent Authority will pass, he will be at liberty to challenge the same before the appropriate forum in accordance with law. This apart, all the liberties granted by the learned Single Judge shall also remain.

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

FMA No.1088 of 2022 stands disposed of along with IA CAN 1 of 2022.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)