

27.09.2022
Item No.09
Court No.6.
S. De

**M.A.T. 1335 of 2022
with
I.A. No. CAN/1/2022**

**Tarun Kumar Malu & Ors.
Vs
The State of West Bengal & Ors.**

Mr. Sudeep Sanyal,
Mr. Sukanta Das,
Ms. Lopamudra Moitra,
...for the appellants.
Mr. Dhilon Sengupta,
Mr. Ayan Chakraborty,
Ms. Sohini Mukherjee,
...for the respondent nos.3&4.
Mr. Nilanjan Bhattacharjee,
Mr. Sanjay Karar,
Mr. Arpan Guha,
...for the respondent nos. 9 to 3.

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

This appeal is directed against a judgment and order dated July 5, 2022, whereby W.P.A. 15630 of 2019 was disposed of by the learned Single Judge.

The private respondents/writ petitioners claimed to be members of Hijli Co-operative Society and approached the learned Single Judge with the grievance that the appellants herein, who were in occupation of a plot of land adjacent to the Society's plot of land, were making unauthorized construction

on their plot of land. They made the grievance that their representation to the Kharagpur Municipality was lying unattended.

The appellants herein questioned the locus standi of the writ petitioners to maintain the writ application. The learned Judge referred to the judgment of the Hon'ble Supreme Court in the case of ***Dipak Kumar Mukherjee Vs. Kolkata Municipal Corporation*** reported in ***All India Reporter 2013 (Supreme Court) 927*** and held that any enlightened resident of the concerned locality can bring to the notice of the local body any unauthorized construction. The learned Judge upheld the locus standi of the writ petitioners to maintain the writ application. Thereafter, the learned Judge noticed that a representation made by the writ petitioners to the Municipality was pending. The learned Judge directed the Municipality and its Chairman to consider such representation and dispose of the same by a reasoned order, in accordance with law, after hearing all concerned parties. The learned Judge further directed that if the Municipality finds merit in the complaint of the writ petitioners that the private respondents/appellants herein are making unauthorized construction, appropriate remedial measures would be taken by the Municipality in accordance with law. The learned Judge also clarified

that the Chairman of the Municipality shall restrict the consideration of the writ petitioners' representation with regard to unauthorized construction only and not enter into or decide any private dispute of the parties regarding right, title or interest in respect of the concerned land.

Being aggrieved, the private respondents in the writ petition are before us by way of this appeal.

We have heard Mr. Sanyal, learned advocate for the appellants and learned advocates representing the Municipality as well as the writ petitioners. We are of the view that the order of the learned Judge does not call for any interference. It is a well-reasoned and well-balanced order. Everybody's interest has been protected. The Chairman of the Municipality will hear all concerned parties including the writ petitioners and the appellants herein and shall consider all documents that may be presented before him by the parties. The Chairman will take a decision in the matter by way of a reasoned order within eight weeks from the date of communication of this order to him. The other directions in the order under appeal shall also be followed by the Chairman of the Municipality.

Mr. Sanyal makes a grievance that the writ petitioners are instituting frivolous legal proceedings one after the other only to harass the present appellants. We make it clear that if, in future, we find

that indeed frivolous litigations are being initiated by the writ petitioners, exemplary cost may be imposed on them.

We have not gone into the merits of this case. The Chairman of the Municipality shall take an informed decision in accordance with law and the applicable rules.

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

M.A.T. 1335 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.)