

D/L
Item No. 23
12.09.2022
KOLE

**MAT 1398 of 2022
With
IA No. CAN 1 of 2022
With
IA No. CAN 2 of 2022**

**Susanta Chatterjee & Ors.
-Vs.-
Lakharaj Shaw & Ors.**

*Mr. Anindya Lahiri,
Ms. P. Das,*

...for the appellants.

*Mr. Chandi Charan De,
Mr. S. Bandyopadhyay,
Mr. A. Sarkar,*

...for the State.

*Mr. Mr. R. De,
Mr. S. Bhattacharyya,
Mr. J. Haque,*

...for the respondent nos. 1 to 7.

In Re: CAN 2 of 2022

This is an application for condonation of delay of 148 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

CAN No. 2 of 2022 is accordingly disposed of.

In Re: MAT 1398 of 2022 with CAN 1 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 February 15, 2022, whereby WPA 14578 of 2021 was disposed of.

The private respondents in this appeal were the writ petitioners before the learned Single Judge. They had challenged an order dated January 14, 2021 passed by the

Director of Fisheries, West Bengal in compliance of an order dated February 5, 2020, passed by a Division Bench in an appeal arising in connection with WP No. 15676 (W) of 2016. The writ petitioners challenged the order of the Director of Fisheries on the ground that the order had been passed in breach of the principles of natural justice inasmuch as certain documents relied upon by the Director of Fisheries were not made available to the writ petitioners, who therefore, could not deal with the same. The private respondents in the writ petition who are the appellants before us had contended that by reason of non-supply of the concerned documents, the writ petitioners did not suffer any prejudice. Therefore, the order of the Director of Fisheries did not warrant interference.

However, the learned Judge set aside the order of the Director of Fisheries and remanded the matter to the said Authority for fresh consideration upon observance of the principles of natural justice. Being aggrieved, the private respondents in the writ petition have come up in appeal.

Mr. Lahiri, learned Advocate, appearing for the appellants repeats his submission that the writ petitioners could not demonstrate as to how they were prejudiced by reason of not being given copies of the concerned documents. However, the Director of Fisheries may consider the matter afresh but in the meantime, the private respondents in the appeal being the writ petitioners cannot proceed with construction on the concerned land which they are doing. In this regard, Mr. Lahiri submits that by reason

of the learned Single Judge setting aside the order of the Director of Fisheries, the order dated February 5, 2020, passed by the Division Bench in FMA 247 of 2020 revives and the restraint imposed by that order on the writ petitioners also revives and will remain operative till the Director of Fisheries takes a fresh decision in the matter upon remand.

We see reason and logic in the submission made by Mr. Lahiri. Therefore, while not interfering with the order of the learned Single Judge, we clarify that till the Director of Fisheries takes a fresh decision in terms of the order of the learned Single Judge, the writ petitioners shall remain restrained from carrying on any construction work on the concerned land or from changing the nature and character of the land in question. We further clarify that till the matter is disposed of afresh by the Director of Fisheries, all the directions in the earlier order dated February 5, 2020 shall remain operative including the restraint imposed on the appellants herein.

We have not gone into the merits of the disputes between the parties. The Director of Fisheries shall take an informed decision in accordance with law observing the principles of natural justice.

The time for the Director of Fisheries to take a fresh decision in terms of the order of the learned Single Judge is extended till the end of November, 2022. If, in spite of this order the writ petitioners carry on with the construction activity, the Appropriate Authority shall stop the same

immediately, if necessary, by obtaining police help. If the Officer-in-Charge of the jurisdictional police station is approached on behalf of such Authority, all cooperation and assistance will be rendered by the police to such Authority.

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

MAT No. 1398 of 2022 and CAN 1 of 2022 are, accordingly, disposed of.

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

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)