

09.11.2022
Item No.13.
Court No.6.
S. De

**M.A.T. 1464 of 2022
with
I.A. No. CAN/2/2022**

**Smt. Bula Roy.
Vs
The State Of West Bengal & Ors.**

Mr. B.P. Subba,
Ms. Nibedita Chakraborty,
...for the appellant.
Mr. Ayan Banerjee,
Ms. Debasree Dhamali,
...for the Bally Municipality.

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

On September 12, 2022, direction was given for filing of Paper Books. Paper Books have not been filed. However, we do not propose to defer the hearing of this appeal since having heard learned counsel for the parties, we are of the opinion that nothing remains in this appeal.

The appellant had approached the learned Single Judge challenging an order of demolition of a construction passed by the Bally Municipality. According to the Municipality, the construction was completely unauthorized and put up on State Government land encroached upon by the appellant. The writ petition was dismissed for default on August

22, 2022. In the order dated August 22, 2022, which is the subject matter of challenge in this appeal, the learned Judge after dismissing the writ petition observed that it will be open to the Municipality “to take all steps for removal of the unauthorized construction in accordance with law.”

Today, Mr. Subba, learned advocate representing the appellant, says that in hot-haste the Municipality demolished the structure which was put up by the appellant. The respondent no.7 is trying to put up a wall on the land in question and the respondent no.7 should be restrained from doing so till the appellant’s application/representation made to Sub-Divisional Refugee Relief & Rehabilitation Officer is disposed of.

Since the order of demolition which was the subject matter of challenge before the learned Single Judge has been executed, the instant proceedings have become infructuous. As regards restraining the respondent no.7 from raising a wall on the land in question, we are not inclined to pass any such order. The same would be a civil dispute between the appellant and the respondent hospital. The appellant would be at liberty to approach the appropriate civil forum for redressal of her grievance in that regard.

We may also observe that the demolition order that the appellant had challenged before the learned

Single Judge, was an appealable order under Section 218(3) of the West Bengal Municipal Act, 1993. Hence, in our view, the writ petition should not have been entertained in any event.

However, since the appellant has made an application/representation dated July 19, 2021, to the respondent no.6 herein (Sub-Divisional Refugee Relief & Rehabilitation Officer), we direct the respondent no.6 to dispose of such application/representation in accordance with law and as per applicable rules, regulations, if any, by a reasoned order, within a period of six weeks from the date of receipt of this order, after giving an opportunity of hearing to all concerned including the appellant and the respondent no.7 herein. The order so passed shall be communicated to the concerned parties within a week from the date of the order. If the application of the appellant is allowed, the respondent no.6 shall pass consequential orders in accordance with law.

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

The appeal being MAT 1464 of 2022 is, accordingly, disposed of along with the connected application being I.A. No. CAN 2 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.)