

24.11.2022
Item No.03
Court No.6.
S. De

M.A.T. 1494 of 2022
with
I.A. No. CAN/1/2022
Monoj Kumar Purkait.
Vs
Murari Purkait @ Murari Charan Purkait & Ors.

Mr. Srikanta Paul,
...for the appellant.
Mr. Mahim Sasmal,
...for the respondent no.6.
Mr. Partha Sarathi Bhattacharyya, Ld. Sr. Adv.,
Mr. Raju Bhattacharyya,
Mr. Kausik Chowdhury,
....for the respondent no.1.
Mr. Malay Krishna Dey,
Mr. Subrata Ghosh,
...for the State.

Affidavit-of-service filed in Court today, be kept
with the records.

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 September 6, 2022 whereby the writ
petition of the respondent no.1 herein (Murari) being
WPA No.20352 of 2022 was disposed of.

Murari had made a construction within the
territorial limits of the concerned Shikharbali-II Gram
Panchayat after obtaining sanction of a building plan
from the Panchayat. Subsequently, the Gram
Panchayat cancelled the sanction on the alleged

ground that sanction had been obtained by making material misrepresentation. Consequent to withdrawal of sanction, the Pradhan-in-charge of the Gram Panchayat issued a notice on November 16, 2015, whereby Murari was called upon to demolish the impugned construction within fifteen days, failing which the Panchayat would effect demolition and recover the costs from Murari. Such withdrawal of sanction and demolition notice were challenged by Murari by filing WPA No. 30043 of 2015. Such writ petition is still pending.

The present appellant approached the learned Single Judge by filing WPA No. 13763 of 2021 for implementation of the order of demolition dated November 16, 2015. Such writ petition was disposed of by an order dated July 13, 2022, whereby the concerned Sub-Divisional Officer was directed to ensure that the demolition order passed by the Pradhan-in-charge is executed at the earliest and positively within sixty days from the date of communication of the order.

Murari had approached the learned Single Judge with an application for recalling the order of July 13, 2022. Such application was dismissed by an order dated September 1, 2022. Subsequently, Murari has filed an appeal being MAT 1518 of 2022 assailing the order dated July 13, 2022.

It appears that pursuant to the order dated July 13, 2022, the Sub-Divisional Officer, Baruipur directed the Pradhan of the concerned Panchayat to take steps for demolition of the impugned construction. The Pradhan issued a notice dated August 18, 2022, calling upon Murari to demolish the impugned structure within September 6, 2022, at his own cost, failing which steps would be taken by the appropriate authority for demolition. This notice along with the notice of the Sub-Divisional Officer directing the Pradhan to take steps, were challenged by Murari by filing WPA No.20352 of 2022. The learned Single Judge disposed of the writ petition by a judgment and order dated September 6, 2022. The operative portion of the said order reads as follows :-

“Under such circumstances, the Court does not find any reason to interfere with the notice impugned before the Court. However, considering the balance of convenience and/or inconvenience that may be caused to the parties, this Court is of the view that as the time period fixed by Her Lordship for completion of demolition work by the Sub-Divisional Officer expires on October 3, 2022, the demolition process, which has not been initiated by the authorities, be kept in abeyance for a period of

two weeks to enable the petitioner to take his chance before the Hon'ble Division Bench.

While the respondent No.6 is the complainant who has approached the authority praying for demolition of an unauthorised construction, no serious prejudice will be caused to the said respondent if the demolition process is stayed for a period of two weeks. Some breathing time is granted to the petitioner to approach the Hon'ble Divisional Bench and take his chance, precisely for the reasons that the petitioner has a right of appeal and a right to protect his property in accordance with law. Whether the property shall be ultimately protected or not, will be a decision on merits and after consideration of the entire issue."

The present appellant (Monoj Kumar Purkait), who was a private respondent before the learned Single Judge is aggrieved by the said order to the extent that the said order directed the demolition work to be kept in abeyance for a period of two weeks.

We have heard learned counsel for the parties. We find no infirmity in the order under appeal. The learned Judge at her discretion deemed it fit and proper to grant breathing space to the writ petitioner.

In any event, the two weeks' period has expired long back and hence nothing survives in this appeal.

MAT 1494 of 2022 is, accordingly, disposed of along with the application being I.A. No. CAN/1/2022.

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.)