

09.11.2022
Item No.16.
Court No.6.
AB

M.A.T. 1612 of 2022
With
IA CAN 1 of 2022

Sri Samarjit Samanta & Anr.
Vs
The State of West Bengal & Others

Mr. Gopal Chandra Ghosh,
Mr. Raj Krishna Mondalfor the Appellants.

Mr. Aswini Kr. Bera,
Mr. Arijit Berafor the Private Respondents.

Mr. Mujibar Rahaman,
Mr. Abdus Salamfor the State.

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

A Judgment and Order dated September 2, 2022, whereby WPA No.3608 of 2022 filed by the appellants herein was disposed of, is under challenge in this appeal.

The appellants/writ petitioners and the private respondents live in the same village. The appellants approached the learned Single Judge with the grievance that the private respondents have blocked a portion of a 'moram' road belonging to the Panchayet by erecting bamboo fence. This has inconvenienced the writ petitioners to a great extent by restricting their movement and has adversely affected their business.

The learned Judge found that there were allegations and counter allegations of factual nature.

Essentially, the disputes between the writ petitioners and the private respondents were of a civil nature. Factual disputes being involved, the learned Judge was of the opinion, and in our view rightly so, that a competent Officer in the Administration should look into the grievance of the writ petitioners. The Writ Court is not well equipped to consider such factual disputes.

Accordingly, the learned Judge disposed of the writ petition with the following direction:

“Under such circumstances, this Court is of the view that the highest authority being the District Magistrate, must try and settle the dispute between the parties by his intervention. An enquiry and an inspection shall be made in the presence of the parties. A reasoned decision shall be taken and communicated to the parties.

The petitioners will serve a copy of the writ petition along with the copies of the orders, which have been passed in this proceeding, upon the District Magistrate. On the basis of such records the entire exercise shall be completed by the District Magistrate within a period of two months from date of communication of this order, upon hearing the parties.

It is made clear that while making such inspection, special attention shall also be given to the fact as to whether a car or matador can pass through the ‘moram’ road. The date and time of the inspection and enquiry shall be communicated to the parties by the office of the District Magistrate to the Gram Panchayet. The Pradhan shall in turn intimate the parties. This Court has not adjudicated the claims and counter claims of the parties.”

Being aggrieved, the writ petitioners have come up in appeal.

Mr. Ghosh, learned Counsel appearing for the appellants says that in spite of communication of the

order under appeal, the District Magistrate has taken no steps in the matter. However, we are told that copy of the writ petition along with copies of the orders passed in the writ petition were not supplied to the District Magistrate as was directed by the learned Single Judge.

We find nothing wrong in the approach or conclusion reached by the learned Single Judge. The disputes between the parties are indeed of such a nature that the Writ Court can hardly adjudicate the same conveniently.

We affirm the order of the learned Single Judge. We direct the District Magistrate, Paschim Medinipur, being the respondent no.7 herein, to act in terms of the order of the learned Single Judge, which is under challenge in this appeal. To enable the District Magistrate to comply with the said order of the learned Single Judge, which we have upheld, the appellants shall forthwith serve a copy of the writ petition along with copies of the orders passed by the learned Single Judge as also a copy of this order, upon the District Magistrate. On the basis of such records, the District Magistrate shall consider the grievance of the writ petitioners and take appropriate action in the matter if he finds that there is merit in the complaint made by the writ petitioners. The entire exercise shall be completed within a period of two months from the date of service of a copy of this order along with a copy of

the writ petition and copies of the orders passed by the learned Single Judge on the District Magistrate. The District Magistrate shall pass a reasoned order in the matter in accordance with law, after giving an opportunity of hearing to all concerned including the appellants/ writ petitioners and the private respondents. The appellants will be at liberty to place the reports of the Panchayet, B.D.O. and the Officer in Charge of the concerned Police Station, which have been filed in this Court and annexed to the stay petition, before the District Magistrate.

We have not gone into the merits of the appellants' case. The District Magistrate shall take an informed decision in accordance with law upon making such enquiry he may deem fit and proper.

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

M.A.T. No.1612 of 2022 is, accordingly, 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.)

