

25.04.2022
Item No.11.
Court No.6.
AB

**M.A.T. 1521 of 2018
With
IA CAN 1 of 2019
(Old CAN 6381 of 2019)
IA CAN 2 of 2019
(Old CAN 6383 of 2019)**

**Mahadeb Dutta & Anr.
Vs
The State of West Bengal & Anr.**

Mr. Indrajeet Bhattacharya ...for the Appellants.

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

In re : CAN 6381 of 2019

This is an application for condonation of delay of 206 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

CAN 6381 of 2019 is, accordingly, disposed of.

In re : MAT 1521 of 2018

The appellants were the writ petitioners before the learned Single Judge. They had challenged a notice of demolition. The learned Single Judge found that the demolition had already been effected. The writ petition was dismissed. Being aggrieved, the writ petitioners are before us in this appeal.

We have heard learned Counsel for the appellants. Even in the second call, nobody has appeared for the respondents.

The appellants say that the demolition order and implementation thereof was illegal and did not have the authority of law. The Municipality, by issuing the demolition order and carrying it out, has caused substantial loss and damage to the appellants. The learned Single Judge did not go into that issue at all.

It appears that the Municipality had filed an affidavit before the learned Single Judge which, however, does not appear to have been considered.

We are of the view that ends of justice will be served if we remand the matter back to the learned Single Judge having determination to hear the matter for fresh decision, particularly on the point as to whether or not the demolition order was legal or not in the face of the permission granted by the Board of Councillors to the writ petitioners to make the impugned construction, as is submitted by the appellants.

We have not gone into the merits of the matter. We request the learned Single Judge to hear out the matter as soon as the business of the Court may permit.

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

MAT No.1521 of 2018 stands disposed of along with CAN 6383 of 2019.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)