

16.
10-01-2023
debajyoti
(Ct. no.06)

MAT 24 of 2023
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IA NO:CAN/1/2023

Gorkhaland Territorial Administration
Vs.
Kalimpong Industries Pvt. Ltd. & Ors.

Mr. B. P. Subba,
Ms. Nibedita Chakraborty, Adv.-on-record
... For the Appellant.

Mr. Arindam Banerjee,
Mr. R. Deb
... For Respondent No.1.

Mr. Amal Kumar Sen, learned A.G.P.,
Mr. Lal Mohan Basu
... For the State.

Mr. Ranjit Singh,
Ms. Nilanjana Adhya
... For Proforma Respondents.

Affidavit-of-Service filed in Court today be taken
on record.

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

This appeal is directed against an order dated
December 08, 2022 passed in WPA 15039 of 2011 filed
by the respondent no.1 herein. The order is interim in
nature. The writ petition is pending before the learned
Single Judge. In fact, the writ petition was directed to
be listed today before the learned Judge. Learned
advocate for the respondent no.1 tells us that the
matter was called on and taken up by the learned
Single Judge, but adjournment was obtained by the
appellant herein citing pendency of this appeal.

It *prima facie* appears that all along before the
learned Single Judge, the parties proceeded on the

basis that 4.80 acres of land belonging to the respondent no.1 herein/writ petitioner has been retained by the appellant herein since 2003. According to the writ petitioner, a reservoir has been constructed on .8 acre of land and the remaining 4 acres has been left inaccessible to the writ petitioner.

This is disputed by Mr. Subba, learned counsel, representing the appellant.

Learned Single Judge by an order dated November 21, 2022, had given three options to the appellant herein. Upon obtaining instructions, learned advocate for the appellant chose option no.3, as is recorded by the learned Single Judge in the impugned order dated December 08, 2022.

In this appeal, Mr. Subba, learned advocate, appearing for the appellant, says that his client was never in possession of 4.80 acres of land. In fact, only .8 acre of land was in his client's possession.

It appears that for the first time, this stand is taken by the appellant herein before us. It also appears that this point was never urged before the learned Single Judge. We are not inclined to entertain this appeal. The appeal and the connected application are, accordingly, dismissed. The appellant will be at liberty to urge all points before the learned Single Judge in the pending writ petition.

We have not gone into the merits of the matter at all. The learned Single Judge is requested to decide the writ petition in the manner His Lordship deems fit and proper.

The learned Judge directed the appellant to pay Rs.22,25,588/- to the writ petitioner by December 30, 2022. Such payment has not yet been made. Mr. Subba, learned advocate, says that such payment, if made, should be without prejudice to the rights and contentions of the parties. We clarify that any payment made shall be without prejudice to the rights and contentions of all the parties to the writ petition. Such payment should be made by February 07, 2023, when, we are told, the matter has been made returnable before the learned Single Judge.

Affidavits not having been called for, the allegations in the stay application shall be deemed not to have been admitted by the respondents.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)