

10 **01.02.2023**

gd/ssd

MAT/41/2023
IA NO: CAN/1/2023
THE EXECUTIVE ENGINEER TAMLUK
HIGHWAY DIVISION AND ANR.
VS
ISRAT BEGAM AND ORS.

Mr. Nilotpal Chatterjee,
Mr. Prantik Gorai,
Mr. Avishek Prasad
..for the Appellants.

Mr. Pappu Adhikari,
Mr. Aritra Roychowdhury,
Ms. Cardina Roy
..for the Respondent Nos.1 and 2.

This appeal is at the instance of the respondents (contemnors) challenging the order of the learned Single Judge dated 21st December, 2022 passed in CPAN 1428 of 2022 in WPA 27501 of 2022 finding that the appellants had committed Contempt of Court and accordingly directing the appellants to pay Rs.30 lakhs to the writ petitioners within a fortnight.

Learned counsel appearing for the appellants has raised the submission that the impugned order has been passed without giving an opportunity of hearing to the appellants to file their response to the contempt application and it has been passed on the first day of hearing of the contempt petition itself. He also submits that the appellants have not committed any contempt, firstly because they were acting in pursuance to the

order of the District Magistrate which was passed on the direction issued in a writ petition; and secondly, as soon as they had received the gist of the interim order passed by the learned Single Judge, the demolition activity was stopped. He submits that the relevant affidavit in this regard could not be placed before the learned Single Judge because no opportunity was given.

Learned counsel for the respondents/contempt petitioners has opposed the appeal by submitting that the appellants had continued with the demolition activity in spite of knowledge of hearing of the petition and they had even continued with the demolition activity after the stay order was orally conveyed between 12 – 12.30 pm and the gist of order was conveyed at 1.16 pm. and that the videography is also available in this regard which can be shown in the Court, therefore, no error has been committed by the learned Single Judge in passing the order.

We have heard the learned counsel for the parties and perused the record.

It has been pointed out by learned counsel for the writ petitioners that direction for removal of encroachment was issued by order dated 18.01.2016 in WP 547(W) of 2016. He has also referred to the order dated 13th October, 2022 passed in WPA 22433 of 2022 wherein there was a direction to the appellate authority

to dispose of the appeal in accordance with law by the end of November, 2022 and submitted that the said appeal was against the order of removal of encroachment. The appeal was disposed of by the District Magistrate and in compliance of the order of the District Magistrate a notice of eviction was given and the appellants were acting upon the order of the District Magistrate dated 23rd November, 2022.

Learned counsel for the writ petitioners/contempt petitioners has referred to the photograph at page 123 showing the position of construction on 13.12.2022 at 10.43 am and has submitted that at that time the construction was standing, whereas learned counsel for the appellants has referred to the photograph at page 124 taken on 13.12.2022 at 1.39 pm in support of the submission that by that time the construction was already demolished. The stand of the contempt petitioner is that the order in the writ petition was passed between 12 – 12.30 pm.

The above submissions reveal that there is factual dispute about the time of communication of the stay order to the appellants, the time when the demolition was stopped after receipt of stay order, and the extent of demolition which had taken place before the stay order came to the knowledge of the appellants. Such a factual dispute can be decided only after giving an

opportunity of hearing to both the parties. For the purpose of determining the issue of violation or disobedience of the order of this Court it is necessary to ascertain the time of communication of notice as also the fact if the activity of demolition had continued thereafter. Additionally, it is also required to be established that the order of the Court was willfully not complied with. These relevant aspects could have been decided after giving an opportunity of hearing to the appellants to file the affidavit-in-opposition in the contempt petition. It is undisputed before this Court that the impugned order has been passed by the learned Single Judge on the first day of hearing of the contempt petition itself. The finding of committing contempt has been recorded without giving an opportunity of hearing to the appellants which resulted in violation of principles of natural justice, therefore, such a finding cannot be sustained.

It is also worth noting at this stage that in the aforesaid factual background, it needs to be ascertained if mere continuation with the demolition proceedings after filing of the writ petition and before passing of order of the stay, will amount to any willful, non-compliance of the order of the Court. These issues can only be decided after giving an opportunity to the appellants to respond to the allegations made in the

contempt petition. Since the said opportunity has not been given, therefore, we are unable to sustain the order of the learned Single Judge, which is accordingly set aside.

It has been pointed out that the appellants have subsequently filed affidavit-in-opposition in contempt petition keeping in view the finding which was already recorded by the learned Single Judge in the order under challenge.

Hence, we permit the appellants to file fresh affidavit-in-opposition in the contempt petition within ten days. The prayer of learned counsel for the contempt petitioners for granting one week time thereafter to file affidavit-in-reply, is also allowed. The contempt petition thereafter be decided in accordance with law.

The appeal is accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

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