

31.01.2023
Item No.10.
Court No.6.
AB

M.A.T. 87 of 2023
With
IA CAN 1 of 2023
IA CAN 2 of 2023

Sri Asish Chowdhury
Vs
The State of West Bengal & Others

Mr. Dilip Kumar Samanta,
Mr. Debapriya SamantaFor the Appellant.

Mr. Pantu Deb Roy,
Mr. Anand FarmaniaFor the State.

Mr. Soumak BeraFor the Respondent No.8.

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

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

In re : IA CAN 1 of 2023

This is an application for condonation of delay of 62 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

I A CAN 1 of 2023 is, accordingly, disposed of.

In re : MAT 87 of 2023, IA CAN 2 of 2023

This appeal is directed against a judgment and order dated September 16, 2022, whereby the writ petition of the private respondent in this appeal was disposed of.

The writ petitioner contended before the learned Single Judge that the appellant herein had made

unauthorized construction. The concerned Panchayet Authorities had made a spot enquiry, granted opportunity of hearing to the parties concerned and thereafter, came to the conclusion that the appellant herein, who was the respondent no.8 in the writ petition, has raised an unauthorized structure. The matter was sent to the concerned Sub-Divisional Officer as per the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973. The grievance of the writ petitioner was that the Sub-Divisional Officer was not taking any step pursuant to the reference made to him by the Gram Panchayet Authorities.

The learned Judge noted that at the hearing before the Pradhan of the Gram Panchayet, the appellant herein was not present. It was contended that the appellant's brother was present. However, the appellant says that his brother was not authorized by him to represent him.

Under those circumstances, the learned Judge disposed of the writ petition with the following observations:

“Under such circumstances, in consonance with the principles of natural justice, this Court deems it fit to hold that the order of the panchayat authorities dated June 29, 2022 be treated as a prima facie finding of the alleged unauthorized construction. However, in order to give one last opportunity to the respondent No.8 to be present before the authorities concerned at the time of determination of the issue, the writ petition is disposed of with the following orders:-

- (a) *The authorities of Kheput Dakshinbarh Gram Panchayat No.7 shall cause an inspection of the premises in question within four weeks from the date of communication of this order. Such inspection shall be held in the presence of all interested parties, with 48 hours advance notice to the petitioner and all interested parties and also the respondent No.8.*
- (b) *A report of such inspection shall be prepared along with the sketch map, indicating the extent of deviation, if any.*
- (c) *Such report shall be handed over to the petitioner as also to the respondent No.8.*
- (d) *In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without permission and is continuing, the authorities may take interim measures by stopping such construction.*
- (e) *A hearing shall be given to the petitioner, the respondent No.8 and all other interested parties. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority.*
- (f) *A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.*

It is made clear that if at any stage the respondent No.8 or his learned Advocate, carrying his vakalatnama, does not cooperate with the panchayat authorities or the Sub Divisional Officer or prays for unnecessary adjournments or is absent on the dates of inspection and hearing, the panchayat authorities and the Sub Divisional Officer shall act and proceed in accordance with law.

The questions of title, possession, encroachment, etc. shall not be decided by the panchayat authorities or the Sub Divisional Officer.

The entire exercise shall be completed within a period of four months from the date of communication of this order.”

We have heard learned Counsel for the parties.

Learned Advocate for the appellant says that given the nature of construction that the appellant has made, he was not required to obtain prior permission of the concerned Panchayet. The constructed area is less than 150 sq. meter and, therefore, no prior sanction from the Authorities was necessary.

We are not inclined to go into the merits of the case. The learned Single Judge has ensured that the principles of natural justice are fully complied with. The appellant and all concerned parties shall have full opportunity of hearing before the concerned Sub Divisional Officer. The appellant would be at liberty to file his written representation before the Sub Divisional Officer, who will duly consider the same in accordance with law. We see no infirmity in the order under appeal. We do not interfere.

However, we are told that a hearing has been fixed today before the concerned Sub Divisional Officer at 12.30 p.m. It is already 11.30 a.m. now. We defer such hearing till 8.2.2023 at 12.30 p.m. No further notice of Wednesday's meeting need be issued by the Sub Divisional Officer. The Sub Divisional Officer shall

naturally take a reasoned independent decision in accordance with law without being influenced by any observation in the order impugned before us or in this order.

Let this order be communicated immediately to the concerned Sub-Divisional Officer by learned Advocate on record for the State.

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.87 of 2023 is, accordingly, disposed of along with IA CAN 2 of 2023.

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.)