

13 22.02.2023

gd/ssd

MAT/169/2023
IA NO: CAN/1/2023, CAN/2/2023, CAN/3/2023
NIMAI MONDAL
VS
THE STATE OF WEST BENGAL AND ORS.

Mr. Bhagabat Chawdhury,
Sk. Toslim Ali
..for the Appellant.

Mr. Santanu Kr Mitra,
Mr. Subhabrata Das
..for the State.

Mr. Dilip Kr. Sinha,
Mr. Dipanjay Bhattacharyee
..for the Respondents/Writ Petitioners.

This intra court appeal is directed against the order of the learned Single Judge dated 21st June, 2022 passed in WPA 10226 of 2022. Since the appellant was not party before the learned Single Judge, therefore, CAN 1 of 2023 has been filed by the appellant seeking leave to file this appeal against the impugned order.

It is not in dispute that the appellant is affected by the proceedings initiated in terms of the direction of the learned Single Judge, therefore, leave is granted to file the appeal.

Accordingly CAN 1 of 2023 is allowed.

CAN 2 of 2023 has been filed by the appellant seeking condonation of delay of 186 days in filing this appeal.

A perusal of the application being CAN 2 of 2023 reveals that the appellant had come to know about the direction of the learned Single Judge on 31st December, 2022 and thereafter had taken steps to file this appeal. Hence, we find that sufficient explanation exists for the delay in approaching this Court.

Accordingly, CAN 2 of 2023 is allowed and the delay of 186 days in filing the appeal is condoned.

The appeal is heard on merit.

The respondents/writ petitioners had approached the writ court raising a grievance in respect of alleged unauthorised construction on public land adjacent to the premises of the writ petitioners.

Learned Single Judge has taken note of the fact that the writ petitioners' representation in this regard was pending before the competent authority. Learned Single Judge has accordingly disposed of the petition directing the Sub-Divisional Officer and Sub-Divisional Magistrate, Ghatal to consider the representation in accordance with law. The competent authority has been permitted to conduct necessary enquiry and obtain the report from the concerned authorities. Learned Single Judge has clarified that if the Sub-Divisional Officer finds unauthorised occupation/encroachment/construction being made on the public land, then he will take adequate measures

under the applicable Act for ensuring eviction of the unauthorised occupants/encroachers/persons making unauthorised construction.

Plea of the learned counsel for the appellant is that no opportunity of hearing is being given to the appellant in the process of eviction, hence his natural right is violated.

Learned counsel for the State has produced a copy of the proceedings dated 9th January, 2023 of the Sub-Divisional Officer. The said proceedings indicates that the appellant was duly noticed and given an opportunity of hearing before the Sub-Divisional Officer and had not submitted any written deposition with sufficient documents.

This aspect is also not disputed by the learned counsel for the appellant.

Hence, we find that the plea raised by the learned counsel for the appellant that no opportunity of hearing has been afforded to the appellant before the competent authority is unsustainable. That apart, no title documents have been shown by the learned counsel for the appellant. Learned counsel for the appellant has fairly stated before this Court that the appellant is not the owner of the premises but has been inducted by the owner but the owner himself has not come forward and the title deed of the owner has also not been produced.

In the above circumstances, we find no ground to interfere in the order of the learned Single Judge.

The appeal is accordingly dismissed.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

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