

February 22, 2023
AD 11
Court No.1
SG

MAT 198 of 2023
with
CAN 1 of 2023
CAN 2 of 2023
CAN 3 of 2023

Uttar Badra Adhibasibindo
vs.
Union of India and others

Mr. Joy Chakraborty,
Mr. Dip Jyoti Chakraborty,
Mr. Sandip Dinda,
Ms. Ipsita Ghosh, Advocates
... for the appellant
Mr. Soumitra Bandyopadhyay,
Mr. Priyabrata Batabyal, Advocates
... for the State
Ms. Manika Roy, Advocate
... for NHAI
Ms. Malabika Saha,
Mr. Subhankar Das, Advocates
... for the writ petitioners/respondents
Mr. N.C. Bihani,
Mr. Soumyajit Ghosh, Advocates
... for South Dum Dum Municipality
Mr. Sudarsan Roy,
Mr. D. Majumder, Advocates
... for the respondent No.10

This intra-court appeal has been filed against the order of learned Single Judge dated 19.07.2021 passed in WPA 4971 of 2019.

Since the members of the appellant association were not party in the writ petition, therefore, CAN 1 of 2023 has been filed seeking leave to file the appeal.

There is a delay of 568 days in filing the appeal, hence CAN 2 of 2023 has been filed seeking condonation of delay.

The record reflects that the respondents/writ petitioners had approached the writ court with the plea that they being Central Government employees have

purchased flats in a residential complex constructed by the Central Government Employee Welfare Housing Organisation under the Ministry of Housing and Poverty Alleviation. The project is situated by the side of Belgharia Expressway. Since no service road was constructed by NHAI as required, the writ petitioners were facing inconvenience. The prayer was made in the writ petition to direct the concerned respondents to construct 2 kms service road (8.5m wide) on both the sides of the expressway as per the specification of NHAI and also to remove the unauthorised encroachment from the area of construction of the service road.

Learned Single Judge in the impugned order has taken note of the fact that the possession of the land in question for the purpose of construction of service road was delivered by the State to NHAI and accordingly directed NHAI authorities to proceed to construct the service road in accordance with the map and in accordance with law. Learned Single Judge has further directed NHAI to invoke appropriate provisions of law to remove any encroachment from the service road, if so required and the State authorities to provide appropriate assistance to NHAI for such purpose.

The issue raised by learned counsel for the appellant is that members of the appellant association are being evicted without issuing any notice.

Learned counsel for NHAI has clarified that none of the encroachers on the land in question will be evicted

without issuing notice in accordance with law. He has also stated that so far more than 200 notices have already been issued.

The above statement of learned counsel for NHAI clearly reveals that NHAI is proceeding in accordance with the order of learned Single Judge which permits them to proceed to construct the road in accordance with law.

That apart, we also find that the appeal has been filed by an unregistered association without giving full particulars of the members of the association. Neither in the writ petition nor in the authorisation document at page 155 of CAN 3 of 2023 requisite details have been disclosed.

Hence, the appeal at the instance of unregistered association without proper particulars cannot be maintained.

That apart, there is an inordinate delay of 568 days in filing the appeal which has not been sufficiently explained.

In view of the above, CAN 1 and 2 of 2023 are dismissed. Consequently, the appeal is also dismissed.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]