

12. 12.04.2023
Court No.6
Tanmoy Ghosh

MAT 240 of 2023

**Palash Samanta & Anr.
-Versus-
The State of West Bengal & Ors.**

**With
IA No: CAN/1/2023**

Mr. Bhudeb Chatterjee, Adv.,
Mr. Rajendra Banerjee, Adv.,
Ms. Somosree Saha, Adv.,
Mr. Dip J. Chakrabarty, Adv.,
Ms. Rama Chakrabarty, Adv.

...for the appellants.

Mr. Chandi Charan De, Ld. AGP,
Ms. Reshmi Rehman, Adv.

...for the State.

Mr. Nirmalendu Patra, Adv.,
Mr. Debnarayan Patra, Adv.

...for the respondent no.8/
writ petitioner.

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

A judgment and order dated January 17, 2023, whereby WPA 20597 of 2022 was disposed of by a learned Single Judge, is the subject-matter of challenge in this appeal.

The writ petition was filed by the respondent no.8 before us. The appellants were two of the private respondents in the writ petition.

It was contended by the writ petitioner before the learned Single Judge that the private respondents in the writ petition have raised unauthorized construction upon encroaching on PWD road adjoining to the writ petitioner's property, thereby obstructing his egress from and ingress to the property. It appears that the writ petitioner had submitted a representation before the concerned Authority. Pursuant to the same, the Assistant Engineer, PWD, Contai Sub-Division, by a letter dated August 2, 2022, requested the concerned Block Land and Land Reforms Officer (BL&LRO) to take necessary steps for demarcation of the PWD land.

The private respondents submitted before the learned Single Judge that they have not encroached upon any portion of PWD land. They have been granted licence by Contai Municipality to carry on business on the plot where they carry on business. The plot belongs to the Municipality.

The learned Single Judge disposed of the writ petition with the following directions:-

“Upon consideration of the submissions made on behalf of the parties, the writ petition being WPA 20597 of 2022 is disposed of directing the 7th respondent to complete the demarcation of the plot in question as indicated in the letter issued on 2nd August, 2022 by the Assistant Engineer, PWD Contai Sub-Division within one month from date and submit a report thereof before the 3rd respondent accordingly. In the event encroachment/ obstruction on PWD land is detected upon demarcation, the 3rd respondent is directed to initiate proceeding under Section 10 of the West Bengal Highways Act, 1964 and take the proceeding to its logical conclusion within two months from the date of receipt of the report upon affording

reasonable opportunity of hearing to all the interested persons including the petitioner and the private respondents, in accordance with law.

Since the private respondents claim that they have been issued licence by the Contai Municipality, the Contai Municipality should also be given an opportunity of hearing before the concerned authority.”

Being aggrieved, two of the private respondents have come up by way of this appeal.

It is submitted on behalf of the appellants that they have in their possession documents, which would indicate that they carry on business from the Municipal land under licence granted by the Municipality. There is absolutely no encroachment on PWD land. Hence, the question of initiation of proceedings under Section 10 of the West Bengal Highways Act, 1964, does not arise. Further, the Municipality was not made a party to the writ petition. Learned Counsel submitted that had direction been given for exchange of affidavits, the documents in support of the contention of the appellants would have been brought on record before the learned Single Judge.

Having heard learned Counsel for the parties, we are of the opinion that the writ petition should be decided afresh after exchange of affidavits. We also feel that Contai Municipality should be impleaded as a party-respondent to the writ petition. Accordingly, we implead Contai Municipality through its Chairperson, as a respondent in the writ petition.

Learned Advocate-on-Record for the writ petitioner will make necessary amendment in the cause title of the writ petition and service of the writ petition will be effected on the Municipality along with a copy of this order within a fortnight from date

The respondents in the writ petition will be at liberty to file affidavit-in-opposition before the learned Single Judge within four (4) weeks from date. Reply thereto, if any, be filed within a week thereafter. The parties will be at liberty to make appropriate prayer for hearing of the writ petition before the learned Single Judge having determination in the matter, after exchange of affidavits or after the time for filing of affidavits has expired.

The order under appeal is set aside.

However, we clarify that we have not gone into the merits of the case at all. We request the learned Single Judge to decide the writ petition on merits upon exchange of affidavits.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 240 of 2023 and the connected application being IA No: CAN/1/2023 are disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties, upon compliance with all requisite formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)