

2-4.
04-05-2023
debajyoti
(Ct. no.06)

MAT 300 of 2023
+
IA NO:CAN/1/2023

Sri Anup Bouri
Vs.
State of West Bengal & Ors.

W I T H

MAT 299 of 2023
+
IA NO:CAN/1/2023

Rajib Bouri
Vs.
State of West Bengal & Ors.

W I T H

FMA 269 of 2023
+
IA NO:CAN/1/2023

Ganga Bouri
Vs.
State of West Bengal & Ors.

Mr. Sabyasachi Mukhopadhyay,
Ms. Koushikee Banerjee

... For the Appellant in all
appeals.

Mr. Chandi Charan De, Id. A.G.P.,
Mr. Anirban Sarkar

... For the State in all appeals.

These three appeals involve similar points of fact and law and have been taken up for hearing and disposal together.

The three writ petitions of these three appellants were disposed of by similar orders, all dated January 05, 2023.

The writ petitioners had approached the learned Single Judge claiming compensation for their land which was taken over by Eastern Coalfields Limited (ECL) in the year 1972. They contend that after ECL conducted mining activities, their land has been irreparably damaged. Hence, ECL should now compensate them in terms of the agreement dated February 03, 1979 between ECL and the predecessors-in-interest of the present appellants.

The learned Single Judge noticed that earlier, three writ petitions were filed by the present writ petitioners in the year 2017, which were dismissed on merits. The appeals preferred from such dismissal orders were dismissed for non-prosecution. The learned Judge noticed that the prayers in the earlier writ petition of 2017 and the prayers in the present writ petitions are identical. Hence, the learned Judge upheld the contention of learned advocate for the respondents that the present writ petition is barred by the principles of *res judicata*, since the earlier writ petition had been decided on merits by a learned Single Judge.

The writ petitioners sought to rely on a notice dated May 09, 2017 before the learned Single Judge. The learned Judge opined that since the notice was of a date which was prior to disposal of the earlier writ petition on merits by order dated July 05, 2017, the writ petitioners must be deemed to have knowledge of the notice; but chose not to place the same before the learned Judge at the hearing of the earlier writ petitions. Accordingly, the said notice does not furnish the writ petitioners with a fresh cause of

action. Observing as aforesaid, the learned Judge dismissed the writ petitions. Hence, these appeals.

From the Affidavit-of-Service filed in Court today, we find that service has been effected on learned advocate for ECL, who had represented ECL before the learned Single Judge. However, nobody appears for ECL. Considering the nature of the order that we propose to pass, we do not wish to defer the hearing of this matter.

Without going into the question of whether or not the notice dated May 09, 2017 furnishes a fresh cause of action, we dispose of the appeals and the applications by granting liberty to the appellants to make comprehensive representations to the appropriate authority in Eastern Coalfields limited within a fortnight from date. If such representation is made, the same shall be decided in accordance with law and the applicable rules and regulations and in the light of the agreement dated February 03, 1979 between ECL and the predecessors-in-interest of the present appellants and also in the light of the Memo dated May 09, 2017, issued by the Area Personnel Manager, Kunustoria Area, Eastern Coalfields Limited and the annexure thereto, which are at pages 118 to 120 of the stay petition. A reasoned decision shall be taken within eight weeks from the date of receipt of the representations after giving an opportunity of hearing to any one of the appellants or their authorized representative. The decision so taken shall be communicated to the appellants within a week from the date of the decision. The appellants shall annex copies of this order to the representations along with copies of the agreement refereed to hereinabove as also

the Memo referred to hereinabove for the sake of convenience.

We clarify that we have not gone into the merits of the claim of the appellants. However, ECL being a public authority and State within the meaning of Article 12 of the Constitution of India, we are sure that the authorities shall take a fair and impartial decision in the matter and compensate the appellants for the loss of their land if they are entitled to such compensation in law.

The order under challenge stands modified to the above extent. The appeal and the connected application are, accordingly, disposed of.

Affidavits not having been called for, the allegations in the stay petition, shall be deemed not to have been admitted by the respondents.

All parties shall act on server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)