

21.03.2023  
Item No.11  
Court No.6.  
S. De

**M.A.T. 355 of 2023**  
**with**  
**I.A. No. CAN 1 of 2023**  
**I.A. No. CAN 2 of 2023**

**Smt. Ashima Samanta.**  
**Vs**  
**The State of West Bengal & Ors.**

Mr. Partha Sarathi Bhattacharyee, Ld. Sr. Adv.,  
Mr. Mahim Sasmal,  
Mr. Raju Bhattacharyya,  
Mr. Arunava Maity,  
...for the appellant.  
Mr. Joydip Banerjee,  
Ms. Moushimi Banerjee,  
...for the respondent no.6.  
Mr. Asish Kumar Guha,  
Mr. N.G. Dostidar,  
...for the State respondents.

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

In re :- I.A. No. CAN 1 of 2023

This is an application for condonation of delay of 99 days in filing the appeal. As per the report of the Stamp Reporter there is no delay. Hence, no order condoning delay is required to be passed.

However, in paragraph 2 of the application for condonation of delay the petitioner has stated as follows :

*“The petitioner state that the respondent no.6 without serving any*

*copy of application of the Writ Application being W.P.A. No.30712 of 2016 (Swapam Nayak –versus- The State of West Bengal and Others) obtaining an illegal order from the Hon’ble High Court Calcutta against the petitioner.”*

The aforesaid averment has been verified as true to the knowledge of the petitioner.

The aforesaid averment is untrue and false as would be evident from the orders recorded in the writ petition. Copy of the writ application was served on the appellant who was the respondent no.6 in the writ petition. We do not make any comment about the appellant saying that the writ petitioner obtained an illegal order from the learned Single Judge as that is her perception.

For having made false statement on oath, the appellant shall pay costs assessed at Rs.5000/- (Rupees Five Thousand Only) to the West Bengal State Legal Services Authority within a fortnight from date.

The department shall forward a copy of this order to the Member Secretary of the West Bengal State Legal Services Authority who shall draw to our attention of failure, if any, on the part of the appellant to pay the costs as directed above.

I.A. No. CAN 1 of 2023 is, accordingly, disposed of.

In re :- MAT 355 of 2023 & I.A. No. CAN 2 of 2023

This appeal is directed against a judgment and order dated November 24, 2022, whereby the writ petition of the respondent no.6 in this appeal being WPA 30712 of 2016 was disposed of.

The present appellant was the respondent no.6 in the writ petition. It appears from the records of the case including the order dated January 9, 2017, as also from the impugned order that service of the writ petition was effected on the present appellant. The appellant, however, was not present before the learned Judge on the day the writ petition was disposed of and the impugned order was passed.

The writ petitioner had approached the learned Single Judge complaining of illegal/unauthorized construction made by the present appellant and inaction on the part of the concerned Gram Panchayat in not considering the representation made by him. The learned Judge noticed that a Co-Ordinate Bench, by an order dated February 7, 2017, had appointed a Civil Engineer to inspect the construction in question and file a report. Such report was filed. It appeared from such report that there were deviations from the sanctioned plan.

The learned Judge also recorded that the Nirman Sahayak of the concerned Gram Panchayat

had also conducted an enquiry on behalf of the Panchayat Authorities and a report had been filed by the Joint Block Development Officer containing the enquiry report of the Panchayat Authority. From such report it appeared that the three feet mandatory space required to be kept vacant, was not maintained. The learned Single Judge disposed of the writ petition with the following observations :

*“As the respondent no.6 has not rectified the defects by removing the unauthorized portions, this Court deems it fit to direct the concerned panchayat authorities to refer the entire matter with all the records and the enquiry report conducted by the Nirman Sahayak to the Sub-Divisional Officer, Tamluk in terms of Section 23(5) of the West Bengal Panchayat Act, 1973 within a period of two weeks for necessary compliance. The petitioner will also transmit the report of the civil engineer and the different orders of this Court along with a copy of the writ petition to the said Sub-Divisional Officer for necessary compliance of Section 23(5) of the West Bengal Panchayat Act, 1973. The petitioner is also directed to communicate this order to the Pulsita Gram Panchayat for necessary compliance. A hearing shall be held by the Sub-Divisional Officer. The petitioner and the respondent no.6 shall be represented by their learned advocates before the Sub-Divisional Officer.*

*Thereafter, steps shall be taken in accordance with law. A reasoned order shall be passed and communicated to all. The authority will deal with all the contentions of both the parties and may cause a further inspection in order to measure the unauthorized construction. Parties must be present at the time of inspection.*

*The entire exercise shall be completed within a period of two months from the date of receipt of the records from the panchayat authorities.”*

Being aggrieved, the respondent no.6 in the writ petition has come up by way of this appeal.

Mr. Bhattacharyya, learned senior advocate appearing for the appellant fairly submits that if the appellant has made any construction in deviation from the sanctioned plan, the same must be removed. However, the appellant is entitled to receive a copy of the report of the Civil Engineer and to file her exception to the same.

We have not called upon the learned advocates for the respondents to make submission.

As regards Mr. Bhattacharyya's submission, we are of the view that the appellant, having chosen not to appear before the learned Single Judge on the day the matter was disposed of, has disintitiled herself to any indulgence from us. She should have appeared and

asked for a copy of the report and also for leave to file exception. She did not do so.

It will be grossly improper for us to interfere with the order of the learned Single Judge at the instance of a person who chose not to appear before the learned Judge in spite of notice of the proceedings. Even otherwise, we do not find any apparent infirmity in the order under appeal as would persuade us to interfere.

Our notice has been drawn to an order dated February 23, 2023, passed by the concerned Sub-Divisional Officer. The same is an order for demolition of the unauthorized construction. The learned Single Judge's order has been worked out. Naturally, it will be open to the appellant to challenge the order of the Sub-Divisional Officer in accordance with law before the appropriate forum if she is entitled to do so in law. We clarify that we have not gone into the merits of the Sub-Divisional Officer's order dated February 23, 2023. In any event the same is beyond the scope of this appeal.

We also clarify that only unauthorized portion of the construction can be demolished leaving intact the authorized portion.

Accordingly, MAT 355 of 2023 is disposed of along with the application being I.A. No. CAN 2 of 2023.

Since we have not called for affidavits, the allegations contained in the stay application are deemed not to be admitted by the respondents.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

**(Apurba Sinha Ray, J.)**

**(Arijit Banerjee, J.)**