

20.07.2023
Item 32 & 33.
Court No.6.
AB

C.P.A.N. 342 of 2023
In
MAT No.87 of 2023

Sri Asish Chowdhury
Vs
Suman Biswas

Mr. Dilip Kr. Samanta,
Mr. Debapriya Samantafor the Petitioner.

Mr. Pontu Deb Roy, ld. AGP,
Mr. Pannalal Bandopadhyay
.....for the alleged Contemnor.

This contempt application has been taken out for alleged wilful violation of the judgment and order dated January 31, 2023, whereby MAT 87 of 2023 was disposed of along with the connected applications.

By the said order, we had affirmed the learned Single Judge's order dated September 16, 2022, whereby the writ petition of the private respondent in the appeal was disposed of.

One Nirapada Maity had approached a learned Single Judge by filing WPA No.20930 of 2022, alleging that the private respondent therein, being the present petitioner, i.e., Asish Chowdhury, had raised unauthorized structure and an order should be passed for demolition thereof. It appears that compliant had first been lodged with the concerned Panchayet Authorities. The Authorities had made a spot enquiry, granted opportunity of hearing to the parties concerned and thereafter had come to the conclusion

that Asish has indeed raised unauthorized structures. The matter was sent to the concerned Sub Divisional Officer in terms of Section 23(5) of the West Bengal Panchayat Act, 1973. The grievance of Nirapada Maity before the learned Single Judge was that the Sub Divisional Officer was not taking any steps pursuant to the reference made to him by the Panchayet Authorities.

The learned Judge took note of the fact that at the hearing before the Pradhan of the Gram Panchayet, Asish (present petitioner) was not present. Nirapada contended that Asish's brother was present on behalf of Asish. Asish, however, stated that his brother was not authorized by him to represent him.

Under those circumstances, the learned Judge disposed of the writ petition by holding that the order of the Panchayet Authorities to the effect that unauthorized construction had been made by Asish, may be treated as a prima facie finding. However, final decision be taken after giving an opportunity of hearing to Asish. The learned Judge laid down a detailed procedure to be followed by the Panchayet Authorities.

The said order was carried in appeal by Asish by filing MAT 87 of 2023. This Division Bench did not interfere with the order and affirmed the same by a judgment and order dated January 31, 2023.

In the above factual background, the petitioner came to us with the case that the order dated January 31, 2023 is not being complied with by the alleged contemnor, who is the concerned Sub Divisional Officer.

An affidavit of compliance has been filed by the alleged contemnor to which a copy of an order dated April 11, 2023, passed by the concerned Sub Divisional Officer has been annexed. This order has been passed in compliance with our order dated January 31, 2023, although belatedly.

Mr. Samanta, learned Senior Counsel appearing for the petitioner vociferously argued that the concerned authorities did not follow the procedure stipulated by the learned Single Judge and affirmed by us. He contended that the authorities could not have deviated from the procedure laid down in the said order.

We understand the anxiety of the petitioner. However, this is a contempt application and its scope is limited. We find that our order in question has been complied with by the alleged contemnor. The order of the Sub Divisional Officer may not be acceptable to the petitioner, who may be aggrieved thereby. However, we cannot, in this proceeding, adjudge the correctness or otherwise of the order of the Sub Divisional Officer. The petitioner will be at liberty to challenge the said order before the appropriate forum in accordance with

law since the same has furnished him with a fresh cause of action.

In view of the aforesaid, the contempt application stands disposed of.

After this order is passed, Mr. Samanta requests this Court to grant a short interim protection to the petitioner so that the petitioner may approach the appropriate forum challenging the order of the Sub Divisional Officer passed on April 11, 2023.

As requested, let the order of the Sub Divisional Officer not be given effect to for a week from date.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)