

22.03.2023
Item No.11
Court No.6.
S. De

**M.A.T. 510 of 2023
with
I.A. No. CAN 1 of 2023**

**Radha Rani Das.
Vs
Ranaghat Municipality & Ors.**

Mr. Mukul Lahiri, Ld. Sr. Adv.,
Mr. Sovan Bera,
Ms. Puja Beriwal,
Mr. Sreyash Kr. Singh,
...for the appellant.
Mr. Achintya Kr. Banerjee,
Mrs. Indumouli Banerjee,
...for the Ranaghat Municipality.
Mr. Santanu Kr. Mitra,
Mr. Sudip Sarkar,
...for the State.

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

An order dated March 20, 2023, interim in nature, passed in the appellant's writ petition being WPA 6515 of 2023, is the subject matter of challenge in this appeal. The writ petition is pending and has been made returnable before the learned Single Judge on April 11, 2023. In the mean time, the Municipality has been directed to file a short report and the writ petitioner has been granted liberty to file her exception thereto.

The appellant/writ petitioner says that at all material times, she used to operate a stall on a footpath under Ranaghat Municipality wherefrom she used to sell non-food items including cosmetics etc. She has relied upon rent receipt issued by the Municipality as also Certificate of Enlistment issued in her favour by the Municipality.

It appears that the State Government has approved construction of a two storied Municipal Market Complex (hawkers' market) within Ranaghat Municipality under "Karmotirtha Prokolpo". It appears that such building has been constructed. The appellant says that some of the persons similarly situated as her, who used to operate stalls on the footpath have been accommodated on the ground floor of the newly constructed building. Others including the appellant have been asked to participate in a lottery. The persons who are successful in the lottery shall be allotted stalls on the first floor of the new building. This, the appellant says, is blatant discrimination and violative of Article 14 of the Constitution.

With the aforesaid case the appellant approached the learned Single Judge. As noted above, the learned Single Judge has called for a report from the Municipality and has granted liberty to the writ petitioner to file her exception to the report. The

learned Judge has further observed that the writ petitioner by not filing the requisite application for participating in the lottery, has chosen to remain out of the entire allotment scheme in respect of the first floor of the renovated market complex. The learned Judge has observed that whether or not the petitioner will be entitled to be allotted a stall in the subject premises shall be decided after necessary instruction is received from the Municipality.

Mr. Lahiri, learned senior counsel appearing for the appellant/writ petitioner, says that the appellant is a tenant under the Municipality and such tenancy cannot be terminated excepting following due process of law. The appellant, as a matter of right, is entitled to be rehabilitated in the newly built market complex. She cannot be asked to participate in a process of lottery as there is no guarantee that she will emerge successful. It is a pure question of chance.

Mr. Banerjee, learned advocate appearing for the Municipality has strongly disputed the submission made on behalf of the appellant. He says that the appellant has no independent right and is definitely not a tenant under the Municipality. He has made submission on various factual aspects which we are not recording since we are not inclined to go into the merits of the matter in view of the pendency of the writ petition before the learned Single Judge. The

Municipality may place its entire case by way of the report that has been called for by the learned Single Judge.

We are not inclined to interfere with the order under appeal. Whether or not the appellant is entitled, as a matter of right, to be rehabilitated in the newly built market complex is yet to be decided by the learned Single Judge. We do not wish to express any opinion on that issue.

However, all actions taken by the respondents shall abide by the result of the writ petition. We further clarify that in the event the writ petitioner succeeds and it is held that the writ petitioner is entitled to, as a matter of right, a stall in the newly built market complex, the Municipality shall ensure that the writ petitioner is accommodated in the newly built market complex. This is of course subject to any right that the Municipality may have to challenge such order before the appropriate forum.

We again clarify that we have not touched the merits of the matter at all.

Accordingly, MAT 510 of 2023 is disposed of along with the application being I.A. No. CAN 1 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.)