

26.04.2023
Item No.3
gd/ssd

MAT/513/2023
IA NO: CAN/1/2023, CAN/2/2023

RAIL VIKAS NIGAM LIMITED
VS
CHANDRAS GREEN PROJECT LIMITED AND ORS.

Mr. Ashoke Chakraborty, learned ASG,
Mr. Shankar Ranjan Sen
..for the Appellant.

Mr. Kishore Datta,
Ms. Sreya Basu Mallick,
Mr. Ankit Dey,
Ms. Suvabhi Savawgi
..for the Respondent Nos.1 and 2.

Mr. Satyajit Talukdar
..for KMDA.

Re: CAN 1 of 2023

1. CAN 1 of 2023 has been filed by the appellant seeking condonation of delay of 41 days in filing this appeal.

2. Learned counsel for the appellant has referred to the explanation which has been furnished in the application and also has made submission in respect of the explanation for the delay.

3. We find that the delay in filing this appeal has been sufficiently explained and the appellant was

prevented from filing the appeal within time on account of bona fide reason.

4. Hence, CAN 1 of 2023 is, accordingly, allowed. The delay in filing the appeal is condoned.

Re: MAT 513 of 2023

5. This intra court appeal by the Rail Vikas Nigam Limited is directed against the order dated 22.12.2022 in WPA 21100 of 2022 by which certain directions have been given to the appellant to restore a slope in the area in question. The property which is the subject matter of this appeal is owned by the Kolkata Municipal Corporation which has been leased out to the writ petitioner who has developed into a commercial space. In order to facilitate the construction of the Metro Rail, certain portions of the entry point and the slopes of the said property had to be cut down and broken to which the writ petitioner was aggrieved. The Metro Rail project has been completed at the location where the subject property is located and now the dispute is with regard to the restoration of the ramp/slope. The writ petitioner's case hinges primarily upon two documents: one is a letter written by the Additional General Manager/Project of the appellant dated 18.02.2013 and another by the Additional General Manager

(Metro-III) dated 09.05.2017 and also the sketch which has been appended to the e-mail dated 20th January, 2014.

6. It is the submission of the writ petitioner before the Writ Court as well as before us that in terms of the sketch initially by way of temporary protection sand bag pitching has to be done and thereafter permanent protection of bolder pitching has to be done. According to the writ petitioner, the permanent bolder pitching has not been done and, therefore, the writ petition was filed.

7. The learned Additional Solicitor General appearing for the appellant pointed out that there are technically issues for the purpose of making any construction or restoration of the slope as it would affect the safety and security of the travelling public in the Metro Rail.

8. This Court is conscious of the fact that the Metro Rail Project is in public interest, therefore, any private interest should definitely be subservient to such public interest. It is precisely for that reason the writ petitioner could not have objected for any alteration, demolition or construction which was put up by the appellant in the leasehold property which is under the possession of the writ petitioner. In any event, the project has been completed partly and from the letters written by the appellant to the

respondent would show that the appellant had undertaken to carry out certain works. We are not here to advise the appellant as to what would be the technical feasibility as to how the work has to be carried out but all that we can observe is that the slope in question should be made in such a way that there is no sliding. In fact, in the sketch which is appended to e-mail dated 20th January, 2014 it has been stated that permanent protection by bolder pitching will be undertaken. Therefore, the appellant should make a technical study of the same and ensure that the slope in question is adequately protected and there is no sliding and whatever technical requirements are required to be fulfilled that should be taken care of by the appellant and we leave such decision to the engineers of the appellant and they shall do so bearing in mind the safety and security of the public who may be visiting the property which has been developed by the respondent/writ petitioner. This is imminently required to be done to prevent erosion as mentioned by the appellant themselves in their letter dated 18th February, 2013.

9. The above direction be complied with within a period of two months from the date of receipt of the server copy of this order.

10. With the above observation the appeal is allowed.

(T. S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)