

20.04.2023
Item No.6.
Court No.6.
AB

**M.A.T. 629 of 2023
With
I A CAN 1 of 2023**

**Jivan Krishna Ghosh & Others
Vs
The State of West Bengal & Others**

Mr. Haradhan Banerjee, Sr. Adv,
Mr. Tanmoy Khan ...for the Appellants.

Mr. Satyajit Talukdar for the KMDA.

Mr. Tapan Kr. Mukherjee, Id. AGP,
Ms. Tuli Sinha for the State.

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

The writ petitioners have come up against the refusal of the learned Single Judge to pass an interim order in WPA 2847 of 2023 and IA CAN 1 of 2023 (application for interim order).

We notice from the order under appeal that by the impugned order dated March 30, 2023, affidavit-in opposition was directed to be filed by April 12, 2023; Affidavit-in-reply was directed to be filed by April 19, 2023; and the matter was directed to be listed for hearing on April 21, 2023 i.e. tomorrow. The learned Judge further directed that “any steps taken by the respondents in the meantime shall abide by the final result of the writ petition.”

Mr. Banerjee, learned Senior Counsel appearing for the appellants/writ petitioners says that the land in question, which belongs to the writ petitioners, was requisitioned under Act II of 1948. Possession was taken in the year 1988. Notice under Section 4(1a) of Act II of 1948 was published in 1989. Award was not published within the time period prescribed by Statute. The acquisition proceedings have lapsed. The State Government and/or the Requiring Authority being the KMDA are under an obligation to return the land to the appellants/writ petitioners. However, KMDA and/or its agent is developing the said land thereby changing the nature and character thereof. There is real apprehension that third party interest will be created in respect of the land or building that may be constructed thereon. In that case, it would be very difficult for the appellants to recover possession of the land. Mr. Talukdar, learned Counsel representing KMDA, however, says that there is no basis for such apprehension.

We are not inclined to go into the merits of the matter since we have noticed that the writ petition and the connected application have been directed to be listed for hearing by the learned Single Judge, on April 21, 2023.

Mr. Talukdar, learned Advocate appearing for KMDA says that his client has filed opposition before the learned Single Judge within the time indicated by

the learned Single Judge. Mr. Banerjee, learned Senior Counsel representing the appellants/writ petitioners, on instructions, says that no reply need be filed on behalf of the writ petitioners before the learned Single Judge in connection with the application for interim order. Reply has been filed in connection with the writ petition.

Mr. Banerjee further says that repeated adjournments have been taken by KMDA before the learned Single Judge. For that reason, the writ petition of 2010 is still pending. Mr. Talukdar, learned Advocate for KMDA vehemently disputes such submission. He as well as Mr. Tapan Kumar Mukherjee, learned Senior Advocate appearing for the State assure this Court that no unnecessary adjournment shall be taken on behalf of KMDA or State before the learned Single Judge.

Since the matter is due to be heard by the learned Single Judge tomorrow (21.4.2023), we are not inclined to interfere. The appellants/writ petitioners will be at liberty to renew their prayer for interim order before the learned Single Judge. Since the appellants seem to have some real apprehension of third party interest being created in respect of the concerned property, we request the learned Single Judge to give some precedence to the writ petition and the connected application to the extent the business of the Court may permit.

We make it clear that we have not gone into the merits of the case. The learned Single Judge is requested to decide the writ application and the connected application in the manner the Learned Judge may deem fit and proper.

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

M.A.T. 629 of 2023 is, accordingly, disposed of along with CAN 1 of 2023.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)