

2.
12-05-2023
debajyoti
(Ct. no.06)

MAT 800 of 2023
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IA NO:CAN/1/2023

Dipti Laha & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Dyutiman Banerjee
... For the Appellants.

Mr. Raja Saha,
Mr. Amit Kumar Ghosh
... For the State.

Mr. Sirsanya Bandopadhyay,
Mr. Tirthankar Dey,
Mr. Arka Kumar Nag
... For B.M.C.

Mr. Anjan Dutta,
Mr. Samrat Das
... For the Respondents/Writ
Petitioners.

Affidavit-of-Service filed in Court today be taken on
record.

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

A judgment and order dated March 22, 2023,
whereby the writ petition being WPA 23163 of 2022 of
the respondent nos.5 and 6 herein, was disposed of, is
the subject matter of challenge in this appeal. The
appellants were some of the private respondents in the
writ petition.

The appellants appear to be members of the
concerned Cooperative Housing Society. So are the writ
petitioners. The writ petitioners want an elevator to be
installed in the building where they reside as they say
that they are aged persons and are suffering from age

related ailments. The appellants herein are opposed to the idea of installation of an elevator.

It appears that the writ petitioners had made an application before the Additional Registrar of Cooperative Societies, who was the respondent no.3 in the writ petition, for approval for installation of elevator. Such application not having been considered, the writ petitioners approached the learned Single Judge by filing the present writ petition. It was submitted on behalf of the State before the learned Judge that the Competent Authority for considering the representation of the writ petitioners would be the Executive Engineer, Bidhannagar, Salt Lake, Kolkata, who was the respondent no.4 in the writ petition.

The learned Judge disposed of the writ petition with the following directions:-

“ Considering the facts and circumstances of the case and submission of the parties, this writ petition being WPA 23163 of 2022 is disposed of by granting liberty to the petitioners to make appropriate representation before the respondent No.4 for seeking approval for installation of elevator, within two weeks from date and if such representation is made by the petitioners before the respondent No.4, he will consider and dispose of the same in accordance with law and by passing a reasoned and speaking order after giving an opportunity of hearing to the petitioners or their authorised representative, within a period of four weeks from the date of receipt of such representation. ”

Being aggrieved, some of the private respondents in the writ petition have filed this appeal.

Learned advocate for the appellants says that the order impugned does not provide that the appellants should also be heard before a decision is taken on the

representation of the writ petitioners. That is their only grievance.

Learned advocate for the writ petitioners very fairly states that he cannot have any objection if this Court modifies the order impugned only to the extent that the appellants would also be heard before the representation of the writ petitioners is finally disposed of by the Competent Authority.

Accordingly, we modify the order impugned to the extent that the respondent no.4, before passing a reasoned order on the representation of the writ petitioners, will afford an opportunity of hearing to the appellants herein or their authorized representatives also. We have not gone into the merits of the case at all. The respondent no.4, if approached by the writ petitioners, in terms of the learned Single Judge's order, will decide the issue independently in accordance with the applicable law and rules and regulations. The time for the Competent Authority/respondent no.4 to pass a reasoned order on the representation of the writ petitioners, which, we are told, has already been made, is extended by four weeks from date. The other portions of the order impugned shall remain unaltered.

The appeal and the connected application are, accordingly, disposed of.

Affidavits not having been called for, the allegations in the stay petition, shall be deemed not to have been admitted by the respondents.

All parties shall act on server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)