

01. 19.05.2023
Court No.6
Tanmoy Ghosh

MAT 828 of 2023

**Saharul Molla
-Versus-
Yusuf Seikh & Ors.**

**With
IA No: CAN/1/2023
With
IA No: CAN/2/2023**

Mr. Debabrata Saha Roy, Adv.,
Mr. Lakshmi Nath Bhattacharyya, Adv.,
Mr. Neil Basu, Adv.,
Mr. Sankha Biswas, Adv.

...for the appellant/applicant.

Mr. Balai Lal Sahoo, Adv.,
Mr. Md. Zeeshanuz Zaman, Adv.

...for the respondent no.1/
writ petitioner.

Mr. Chandi Charan De, Ld. AGP,
Mr. Anirban Sarkar, Adv.

...for the State.

Mr. Tapash Kr. Mondal, Adv.

...for the *Zilla Parishad*,
South 24-Parganas.

In Re: IA No: CAN/1/2023

The applicant prays for leave to prefer appeal against a judgment and order dated May 4, 2023, whereby the writ petition of the respondent no.1 herein being WPA 7184 of 2023, was disposed of by a learned Single Judge.

The applicant was not a party to the writ application. The applicant says that the order that is sought to be impugned by him, seriously affects him.

We have heard learned Counsel for the parties. We are of the view that the applicant may have something to say. Hence we grant leave to the applicant to prefer appeal against the judgment and order dated May 4, 2023.

Accordingly this application being IA No: CAN/1/2023 is allowed and disposed of.

In Re: MAT 828 of 2023
With
IA No: CAN/2/2023

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

The respondent no.1/writ petitioner is the owner of a plot of land bearing no. 2548. He is also in occupation of plot no. 2603/3276, where he claims, he runs a tea stall for more than thirty three years. Apparently, he has made construction on the said plot being no. 2603/3276. According to the appellant herein, such construction is unauthorized and has been made on PWD land. According to him, such construction is seriously obstructing egress to and ingress from his residential house. He made a complaint to the appropriate Authority under the West Bengal Highways Act, 1964 (hereinafter referred to as the 'said Act'). A proceeding under Section 10(3) of the said Act was initiated culminating in an order directing the writ petitioner herein to remove the construction in question.

The writ petitioner preferred a statutory appeal under Section 10(4) of the said Act, which was dismissed.

In the meantime, the writ petitioner had applied to the Competent Authority for granting long-term settlement in his favour in respect of plot no. 2603/3276. His representation/application not having been considered, he had approached this Court in an earlier round of litigation. The learned Single Judge having declined to pass any *interim* order, the writ petitioner had come up in appeal before us by way of MAT 1747 of 2022. By a judgment and order dated December 5, 2022, this Bench had disposed of the appeal as well as the writ petition by directing the District Magistrate and Collector, South 24-Parganas, to take a reasoned decision on the writ petitioner's representation dated October 11, 2022. Such decision was taken by the District Magistrate who rejected the writ petitioner's representation. Such rejection order was challenged by the writ petitioner in the present round of litigation before the learned Single Judge.

The learned Single Judge took note of the fact that the writ petitioner's representation was rejected by the Competent Authority without taking into consideration Rule 238 of the West Bengal Land and Land Reforms Manual, 1991. The learned Judge has accordingly set aside the order rejecting the writ petitioner's application for long-term settlement and has directed the Competent

Authority being the District Magistrate to pass a fresh order after hearing the parties and taking into consideration Rule 238 of the Manual within two months from the date of communication of the order. *Status quo* as regards the land was directed to be maintained by the parties till a fresh decision is taken by the District Magistrate.

The appellant says that although in principle the appellant does not have any objection to the order of the learned Single Judge being implemented by the District Magistrate considering the writ petitioner's representation afresh, since the decision of the District Magistrate may have adverse civil consequences for him, he should be allowed to participate in the hearing to be held by the District Magistrate.

We think that the appellant has a point. In the event the District Magistrate allows the writ petitioner's prayer for long-term settlement, the same may have the effect of nullifying the order directing him to remove the construction that has been objected to by the appellant. This would definitely affect the appellant adversely.

Therefore, without going into the merits of the case at all we only direct that in any hearing that the District Magistrate may hold in terms of the order of the learned Single Judge, which is impugned herein, the appellant will have a right to participate. Sufficient notice of such hearing shall be given by the District Magistrate to the

appellant herein, needless to say that the District Magistrate shall consider the representation of the writ petitioner, in accordance with law.

We repeat that we have not applied our minds at all to the merits of the writ petitioner's prayer for long-term settlement or the appellant's grievance against the writ petitioner.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

With the aforesaid modification of the impugned order, the appeal being MAT 828 of 2023 and the connected application being IA No: CAN/2/2023 are disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)