

S/L 22
22.11.2024
Court. No. 551
Sourav

**WPA 11338 of 2018
With
CAN 1 of 2024
With
CAN 2 of 2024**

**Sri. Radha Gobinda Saha
Vs.
Nabadwip Municipality & Ors.**

Mr. Shouvik Naskar

...for the petitioner.

*Mr. Biplab Guha
Mr. Bikas Mondal*

...for the respondent no. 4.

The affidavit-of-service as filed in Court today is taken on record.

In Re: CAN 1 of 2024 and CAN 2 of 2024

1. Since the applications being CAN 1 of 2024 and CAN 2 of 2024 are not available in the record, the authenticated copy of CAN 1 of 2024 and CAN 2 of 2024 as filed by the learned advocate for the writ petitioner are taken on record.
2. By filing the application being CAN 2 of 2024, the writ petitioner has prayed for condonation of delay of 305 days in filing the application being CAN 1 of 2024.
3. In support of the application under Section 5 of the Limitation Act, learned advocate for the writ petitioner submits before this Court that on account of the ill-health of the writ petitioner, he could not contact with his learned advocate and as a result whereof the writ petitioner could not give proper instruction to his learned advocate.

4. It is further submitted that after a considerable length of time, the petitioner came to know about the dismissal of the instant writ petition and, thereafter, his learned advocate returned the brief to him and he engaged a new lawyer and thus, 305 days day occurred in filing the restoration application being CAN 1 of 2024.
5. Learned advocate for the respondent/Municipality opposes such prayer. It is submitted by him that delay has not been properly explained. It is further submitted that a flimsy ground has been taken in the petition under Section 5 of the Limitation Act. Learned advocate for the respondent/Municipality places his reliance upon the reported decisions in the case of ***State Bank of India Vs. M/s. Balito Engineering Corporation and Others*** reported in ***AIR 1988 Calcutta 246*** and ***2005 (3) CHN, Page 19, Para – 13***.
6. On perusal of the entire materials as placed before this Court, it reveals that admittedly along with CAN 2 of 2024 no document regarding ill-health of the writ petitioner has been filed. However, considering the fact that a litigant is not supposed to suffer for the conduct of his learned advocate, this Court is inclined to take a lenient approach.
7. In view of such, the petition under Section 5 of the Limitation Act with a prayer for condoning the delay of 305 days in filing the application being CAN 2 of 2024 is hereby allowed.

8. Accordingly, the application being CAN 2 of 2024 is thus disposed of.
9. By filing the application being CAN 1 of 2024, the writ petitioner has prayed for recalling the order of dismissal dated 01.05.2023 on account of his illness as well as on account of failure of the writ petitioner to give proper instruction to his lawyer.
10. Such prayer is also opposed by the respondent/Municipality.
11. This Court considers that the writ petitioner deserves an opportunity to proceed with the instant writ petition. Accordingly, the order of dismissal of the instant writ petition as passed on 01.05.2023 is hereby recalled.
12. Consequently, the instant writ petition being WPA 11338 of 2018 is restored to its original file and number.
13. Accordingly, the application being CAN 1 of 2024 is thus disposed of.

In Re: WPA 11338 of 2018

1. By filing the instant writ petition the writ petitioner alleges non-consideration of his representation dated June 20, 2018 which has been annexed at page Nos. 17 to 19 of the instant writ petition by the respondent No. 4, i.e., the Chairman, Nabadwip Municipality.
2. On perusal of the copy of the representation dated June 20, 2018 it reveals that it is the allegation of the writ petitioner that the private respondent Nos. 8 and 9 had constructed a tin shed room over the property of the writ petitioner that is on the 12 decimals land being L.R. Plot No. 386 appertaining to L.R. Khatian No.

12374, 10569, 3284, Mouza – Nabadwip, J.L. No. 20, Ward No. 7, Holding No. 132 of Prachin Mayapur (South), P.O. & P.S. Nabadwip, District – Nadia.

3. It is further submitted that such construction has been made without any sanctionp plan by the said private respondent who at that material time were the Councillors of the Nabadwip Municipality. On perusal of the record it reveals that one Sri Surajit Saha, Sub-Assistant Engineer, Nabadwip Municipality submitted a report as per direction of this Court the relevant portion of which is as under:

“There exists only a Tin-Shed bamboo structure existed for over decades on the same place constructed based on the demand of Mass of the locality at that time. On the very beginning when it came into being existence (tin shed bamboo structure), it was local political party office used by Indian National Congress. After that it came to be known as the Office Karyalaya. Of All India Trinamool Congress (since 1998).”

4. Learned Advocate for the respondent No. 4 submits before this Court that no case has been made out by the writ petitioner for invoking the writ jurisdiction of this Court.
5. On perusal of the entire materials as placed before this Court especially the report as submitted by the Sub – Assistant Engineer, Nabadwip Municipality it does not transpire to this Court as to whether the said tin shed structure has been constructed after obtaining any plan or not.

6. In view of such, while disposing the instant writ petition this Court directs the respondent No. 2, i.e., the Board of Councillors of the Nabadwip Municipality to consider the instant writ petition as a representation of the writ petitioner. The said Board of Councillors of Nabadwip Municipality are directed to come to a finding as to whether the said structure on the aforementioned plot of land has been constructed in accordance with law or not after giving an opportunity of hearing to the writ petitioner, the respondent Nos. 8 and 9 and any other interested persons if they think fit and proper and thereafter shall pass a reasoned order in accordance with law and shall communicate the same to the writ petitioner positively within a fortnight either through email (if email address of the writ petitioner is provided at the time of hearing) or through a special messenger.
7. In the event the Board of Councillors of the Nabadwip Municipality found that no prior permission was taken for construction of the said tin shed over the aforementioned plot of land, the Board of Councillors shall take an appropriate steps for demolition of the said structure forthwith also in accordance with law. The entire exercises as indicated hereinabove are to be completed within three months from today.
8. The time limit as made by this Court is mandatory and peremptory.

9. Learned Advocate for the respondent No. 4 is hereby requested to communicate the server copy of this order to the respondent No. 2 at the earliest.
10. The respondent Nos. 2 and 4 are directed to act on the server copy of this order.
11. With the aforementioned observations, the instant writ petition being **WPA 11338 of 2018** is hereby disposed of.
12. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)