

D/L
Item No. 07
08.09.2023
KOLE

**MAT 1015 of 2023
With
IA CAN 1 of 2023
With
IA CAN 2 of 2023**

**Bhagya Roy
-Vs.-
The State of West Bengal & Ors.**

*Mr. Dilip Kumar Samanta,
Mr. B. Samanta,
Ms. Tithi Paul,*

...for the appellant.

*Mr. Suman Ghosh,
Mr. N. Roy,*

.... For the State.

*Mr. Lalit Mohan Mahato,
Mr. Z. Haque,*

...for the respondent no. 8.

*Mr. Debjit Mukherjee,
Ms. S. Chatterjee,*

...for the respondent nos. 12 and 13.

*Mr. Sounak Bhattacharyya,
Ms. S. Chakraborty,*

...for the respondent nos. 14, 15, 17, 18 and 20.

In Re: CAN 1 of 2023 in MAT 1015 of 2023:

This is an application for condonation of delay of 18 days in presenting the appeal as noted by the Additional Stamp Reporter.

Causes shown being sufficient, we condone the delay.

CAN No. 1 of 2023 is, thus, allowed.

In Re: MAT 1015 of 2023 and CAN 2 of 2023:

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

This appeal is directed against a judgment and order dated April 17, 2023, whereby the appellant's writ petition

being WPA 7019 of 2023 was disposed of by a learned Single Judge of this Court.

The appellant had approached the learned Single Judge with the allegation that the respondent nos. 12 and 13 had raised certain unauthorized constructions on a debottur property by filling up a pond. It was further alleged that after construction of shop rooms on the debottur property, the same were handed over to the respondent nos. 14 to 20 who set up stalls and are carrying on business therefrom. It was further submitted that several mass petitions had been filed before the concerned Block Development Officer, the District Magistrate, Hooghly and the Pradhan of the concerned Gram Panchayat. The learned Judge's attention was also drawn to a communication from the District Magistrate, Hooghly, whereby the concerned Block Development Officer was directed to take necessary steps in the matter.

The learned Advocate for the respondent nos. 12 and 13 denied the *locus standi* of the petitioner to maintain the writ petition on the ground that the debottur was not a public debottur. Attention of the learned Judge was also drawn to proceedings pending before the competent Civil Court where the plaintiffs failed to obtain restraint orders against the present respondent nos. 12 and 13 herein.

Certain documents were produced before the Learned Single Judge. Learned Advocate for the respondent no. 12 handed up a document which was a plan sanctioned by the concerned Gram Panchayat for construction of shop rooms

on plot no. 4519. Learned Advocate for the State referred to a letter dated January 19, 2023, issued by the Block Development Officer, addressed to the concerned Block Land & Land Reforms Officer to make an enquiry with regard to the construction on plot no. 4510 which is a pond. As per the report of the Block Land & Land Reforms Officer, no portion of the water body had been illegally filled up. Report was also submitted by the Pradhan of the concerned Gram Panchayat to the Block Development Officer which showed that the Pradhan had given sanction for making construction on plot no. 4519 and not on plot no. 4510 or plot no. 4514. The learned Judge further noted that the writ petitioner had also approached the West Bengal Pollution Control Board with the allegation of illegal filling up of the pond.

A report of the Revenue Inspector of the concerned Gram Panchayat showed that construction of shop rooms had been made on dag no. 4519 which is adjacent to plot no. 4510 and that such shop rooms were constructed on the edge of the pond but not affecting any portion of the pond. The shops were being run after obtaining requisite permission, trade license and electric connections.

Noting the aforesaid, the learned Judge concluded that no order could be passed in favour of the writ petitioner. The learned Judge disposed of the writ petition with the following observations:-

“However, as it is the contention of the petitioner that apart from the Plot No. 4519, constructions had been made illegally on Plot No. 4515 ad 4510, such issue has to be

decided by the gram panchayat. Further allegation of construction over a 'doba', without any conversion, has also been made. The petitioner has liberty to approach the respective authorities, in accordance with law with the above allegations.

If complaints are filed, the same will be disposed of by the respective competent authorities, upon giving an opportunity of hearing to the petitioner and all the other respective interested parties.

The allegation of respondent no. 10 that the respondent nos. 12 and 13 did not have any right to obtain permission from the panchayat authorities for construction of shop-rooms on a debuttar property by ignoring the said respondent, and the respondents should be restrained from unilaterally dealing with the property, can be raised before the learned Civil Court and the learned civil court shall decide such issue..”

Being aggrieved, the writ petitioner has come up before us by way of this appeal.

Appearing for the appellant/writ petitioner, Mr. Samanta, learned Advocate, submitted that though sanction had been obtained from the competent authority for making construction on plot no. 4519, in fact, construction has been made by the respondent nos. 12 and 13 on plot no. 4514. This is grossly illegal and the impugned constructions should be demolished forthwith. No submission was made before us as regards illegal filling up of the pond being plot No. 4510. We called for the writ petition. We did not find that the point that is being argued before us has been taken in the writ petition. It is nowhere alleged in the writ petition that the respondent nos. 12 and 13 having obtained permission for making construction on plot no. 4519, in fact, made

construction on plot no. 4514. Since this is a factual issue, we cannot permit the appellant to raise this for the first time before us.

Even otherwise, we have carefully gone through the order of the learned Single Judge and we have noted the salient portions thereof. Based on reports of various Government Authorities and Panchayat Authorities, the learned Judge has come to the conclusion that there is no construction on plot no. 4510 which is the pond, nor on plot no. 4514. The Learned Judge has, however, granted liberty to the appellant/writ petitioner to approach the appropriate authority with any grievance that the writ petitioner may still have.

We do not find any such infirmity in the judgment and order assailed before us, as would persuade us to interfere. We, accordingly, dismiss the appeal and the connected application affirming the order of the learned Single Judge. The appellant would be at liberty to take appropriate steps in accordance with law in terms of the order of the learned Single Judge.

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

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

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)