

02.08.2023
Item No.04
Court No.6.
S. De

M.A.T. 1086 of 2023
With
I.A. No. CAN/1/2023
I.A. No. CAN/2/2023

Sudhangshu Sekhar De.
Vs
The State of West Bengal & Ors.

Mr. Robiul Islam,
Mr. Raju Mondal,
...for the appellant.
Mr. Sujay Bandyopadhyay,
Mr. Shambhu Mahato,
...for the Midnapore Municipality.
Mr. Rabindranath Mahato,
Mr. Aritra Shankar Ray,
...for the respondent nos. 11 to 13.
Mr. Jahar Datta,
Mr. Benazir Ahmed,
...for the State.

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

In re : I.A. No. CAN 1 of 2023.

This is an application for condonation of delay of six days in filing the appeal. Causes shown being sufficient, the delay is condoned.

I.A. No. CAN 1 of 2023 is, accordingly, disposed of.

In re : MAT 1086 of 2023 & I.A. No. CAN 2 of 2023.

This appeal is directed against a judgment and order dated April 19, 2023, whereby the learned Single

Judge disposed of two writ applications being WPA 25283 of 2022 (Pallab Sarkar Vs. The State of West Bengal & Ors.) and WPA 27873 of 2022 (Sudhangshu Sekhar De Vs. The State of West Bengal & Ors.).

The private respondents in both the writ applications were the same persons. Pallab filed the writ application with the grievance that a building plan was illegally sanctioned in favour of the private respondents pursuant where to, constructions have been raised by the said respondents and such plan should be withdrawn/cancelled by the Midnapore Municipality. Pallab's specific contention was that the quantum of land mentioned in the sanctioned plan is incorrect. The same does not tally with the quantum of land mentioned in the relevant title deed. The private respondents have made construction on greater area of land than has been shown in the sanctioned plan.

Sudhangshu's contention was that the private respondents have made unauthorized construction in deviation from the sanctioned building plan.

The learned Judge had called for a report from the SRO-II and the Revenue Officer & Technical Advisor. Such a report dated February 28, 2023, was filed. After considering the report, the learned Judge observed that the root of the issue appears to be the quantum of land on which the private respondents

have made construction. The learned Judge disposed of the writ applications with the following observations :-

“Neither the Municipality nor the State respondents will be the appropriate body to decide the issue. There are several disputed questions of facts which cannot be decided by the writ Court. Evidence is required to be adduced to come to a conclusion with regard to the quantum of land held by the parties.

In view of the above, both the writ petitions stand disposed of by granting liberty to the petitioners to approach the appropriate forum for declaration of their rights.

The Municipality will only ensure that no unauthorized construction is carried out at the subject premises.

Be it recorded that T.S. No.44 of 2021 has been filed by Sudhangshu against the private respondents and the State authorities. The said Suit is pending consideration.”

Being aggrieved, one of the writ petitioners being Sudhangshu has come up by way of this appeal.

We enquired of the learned advocate appearing for Sudhangshu as to whether or not Sudhangshu had made a representation to Midnapore Municipality ventilating his grievance regarding alleged

unauthorized construction having been made by the private respondents. Learned advocate apprises us that such a representation had been made. The same has been disposed of by a reasoned order dated November 5, 2022. We are told that such order was brought on record before the learned Single Judge by learned advocate for the Municipality. The order of the Municipality was, however, not challenged in the writ petition filed by Sudhangshu.

The order of the Municipality may have been brought on record before the learned Single Judge, but the fact remains that such order was not under challenge in the writ petition filed by Sudhangshu. The appellant says that he is aggrieved by that order as there are anomalies in that order. That may be so, we express no opinion on that as we are not inclined to enter into the merits of the dispute. The obvious remedy of the appellant is to challenge the said order of the Municipality in accordance with law, if he is entitled to do so.

Mr. Mahato, learned advocate appearing for the private respondents says that since the appellant i.e. Sudhangshu did not challenge the said order of the Municipality in his writ petition, his challenge to the order would be barred under the provisions of Order 2 Rule 2 of the Code of Civil Procedure.

Mr. Islam, learned advocate for the appellant says that as on the date of filing of the writ petition, Sudhangshu did not have knowledge of the order of the Municipality as the same had not been communicated to him. Be that as it may, we are not entering into such a dispute. If the appellant is entitled in law to challenge the order of the Municipality, he will be at liberty to do so.

We find no apparent infirmity in the order under appeal. Any challenge that the appellant herein may throw to the order of the Municipality shall be decided in accordance with law without being influenced by any observation in the order under appeal in this proceeding.

MAT 1086 of 2023 is disposed of along with the application being I.A. No. CAN 2 of 2023.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)