

04. 11.01.2023
Ct. No.6
Tanmoy

MAT 1069 of 2021

**Smt Gita Rani Dutta
-Versus-
State of West Bengal & Ors.**

**With
IA No: CAN/2/2021**

Mr. Debashis Kundu, Ld. Sr. Adv.,
Ms. Soumi Guha Thakurta, Adv.

...for the appellant.

Mr. Malay Kumar Singh, Adv.,
Mr. Md. Masood, Adv.

...for the State.

Mr. Sudip Sarkar, Adv.,
Mr. Krishna Pada Santra, Adv.,
Ms. Reshmi Khatun, Adv.

...for the respondent no.3.

Mr. Debdatta Basu, Adv.,
Mr. Sukdeb Sarkar, Adv.

...for the respondent nos. 9-12.

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

This appeal is directed against a judgment and order dated March 9, 2021, whereby WPA 3336 of 2021, filed by the private respondents in the appeal, was disposed of.

The private respondents in this appeal approached the learned Single Judge as writ petitioners alleging illegal and unauthorized construction on their land encroached upon by the appellant herein, who was the private respondent in the writ petition. Apparently, the *Pradhan* of

the concerned *Gram Panchayat*, by a communication dated October 14, 2020, intimated learned Advocate for the writ petitioners that no permission for constructing the present appellant's house had been granted by the *Gram Panchayat*. The writ petitioners applied before the *Pradhan* of the *Gram Panchayat* for taking steps for demolition of the appellant's house. Alleging that the *Pradhan* was failing in his duty, the writ petitioners approached the learned Single Judge.

It appears that the present appellant was not represented on the day the writ petition was disposed of and the impugned order was passed.

On the basis that there is no house building approval in favour of the appellant herein, the learned Judge directed demolition of the appellant's house at the earliest, but positively within six months from the date of communication of the order. Being aggrieved, the private respondent in the writ petition has come up by way of this appeal.

We have heard learned Counsel for the parties. Since the appellant herein did not appear before the learned Single Judge when the writ petition was heard and disposed of, we are not inclined to hear the appellant on merits of the case. The appellant should have appeared at the hearing of the writ petition and made submission before the learned Single Judge. The learned Judge did not have the benefit of hearing the appellant herein. It will not

be proper for us to interfere with the order under appeal. The appellant may approach the learned Single Judge with an appropriate application to explain her absence on the day the writ petition was disposed of *ex parte*, insofar as she is concerned. If the learned Judge is satisfied that there was sufficient cause for the appellant not to be represented, Her Ladyship is requested to pass appropriate orders as may be deemed fit and proper.

We do not interfere with the order under appeal.

However, when the appeal was admitted, an order dated October 1, 2021 was passed whereby the operation of the impugned order was stayed until further orders. Since we are not interfering with the order under appeal, we vacate that order. However, for the ends of justice we direct that if the appellant makes an appropriate application before the learned Single Judge within a fortnight from date, no steps will be taken for demolition of the appellant's house until disposal of that application. The learned Single Judge is requested to decide such application, if any, without being influenced by any observation in this order. We only clarify that if the learned Judge is satisfied that the appellant herein had sufficient cause not to appear on the day the matter was disposed of and the learned Judge then hears the appellant herein on merits, still it would be open to the learned Single Judge to pass the same order if Her Ladyship is not satisfied with the case of the appellant herein.

The appeal being MAT 1069 of 2021 and the connected application being IA No: CAN/2/2021 stand disposed of.

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

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)