

D/L
Item No 19
19.06.2023
KOLE

**FMA 146 of 2022
With
IA No. CAN 1 of 2021
With
IA No. CAN 2 of 2021**

**Uttam Mondal
-Vs.-
The State of West Bengal & Ors.**

*Mr. Shibaji Kumar Das,
Ms. Rupa Seemani,*

...for the appellant.

From the affidavit of service filed in court today it appears that the respondents have received notice of the appeal. However, none appears for the respondents.

The original of CAN 1 of 2021 and CAN 2 of 2021 are not available in the records. The Department has given a note that the same could not be traced. Let two authenticated copies of CAN 1 of 2021 and CAN 2 of 2021 be made available to our Court Officer in course of the day, to be retained with the records.

In Re: CAN 1 of 2021 in FMA 146 of 2022

This is an application for condonation of delay of 316 days in filing the appeal as noted by the Additional Stamp Reporter.

Causes shown being sufficient, we condone the delay.

CAN No. 1 of 2021 is, thus, allowed.

In Re: FMA 146 of 2022 with CAN 2 of 2021

This appeal is directed against a judgment and order dated September 30, 2020, whereby the appellant's writ petition being WPA 6914 of 2020 was dismissed.

The appellant had approached the learned Single Judge with a prayer for issuance of a writ of mandamus against the Baranagar Municipality to provide separate water connection to him. There appears to be a partition suit pending in respect of the concerned property, between the appellant and his brother. The water connection appears to be in the portion which is in the occupation of the appellant's brother. Therefore, the appellant says that he does not have access to water connection which is causing him serious prejudice. He and his family have been without water for days together.

The learned Judge disposed of the writ petition observing as follows:-

“The issue raised in the present writ petition is completely private in nature and the same can only be addressed appropriately before the Civil Court where the suit for partition is pending.

That being the position, the writ petition being WPA 6914 of 2020 is dismissed.

However, dismissal of the writ petition will not prevent the petitioner to approach the Civil Court for appropriate relief in the pending suit.”

Being aggrieved, the writ petitioner is before us by way of this appeal.

Learned Advocate for the appellant says that the appellant's only prayer is that his representation dated August 18, 2020 made to the Chairman of Baranagar Municipality be considered in accordance with law. In principle, we find no infirmity in the order of the learned Single Judge. However, it is unlikely to harm anybody if an order for consideration of the appellant's prayer is passed.

Accordingly, we direct the Chairman of the Baranagar Municipality to consider and dispose of the representation dated August 18, 2020 made by the appellant, in accordance with law, by passing a reasoned order within four weeks from the date of receipt of a copy of this order along with a copy of the representation after affording an opportunity of hearing to the appellant and the respondent no. 8 or their authorized representatives. The decision so taken shall be communicated to the parties within a week from the date of the decision. We clarify that we have not gone into the merits of the appellant's claim for a separate water connection. It will be up to the Chairman of the Municipality to take an informed decision in accordance with law and the applicable rules and regulations. If the Chairman is of the opinion that a local inspection of the site in question is necessary, he will be at liberty to do so, either himself or through his authorized officer.

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.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)