

27.07.2023
Item No.02
Court No.6.
S. De

M.A.T. 1175 of 2023
With
I.A. No. CAN/1/2023

Bibhuti Bhusan Nath @ Bibhuti Nath.
Vs
The State of West Bengal & Ors.

Mr. Manik Das,
Mr. Arindam Chatterjee,
...for the appellant.
Mr. Santanu Kr. Mitra,
Mr. Sanatan Panja,
...for the State.

Affidavit of service filed in Court today be kept
with the records.

In spite of service, the panchayat authorities
have not appeared.

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

A judgment and order dated May 18, 2023
whereby the appellant's writ petition being WPA 19606
of 2022, was disposed of by a learned Single Judge of
this Court is under challenge in this appeal.

The appellant approached the learned Single
Judge contending that he is the owner of a demarcated
portion of plot no. 608 of Mouza Jirat. He was making
construction of shop rooms on that plot. Such
construction was being made pursuant to plans

sanctioned by the Jirat Panchayat. Suddenly, he received notice from the concerned Block Development Officer for stopping the construction work.

The petitioner contended before the learned Single Judge that the State respondents started constructing a urinal and a garbage vat in front of the property of the writ petitioner creating nuisance for the petitioner.

The learned Judge called for a report from the concerned Block Development Officer. Such report was filed. Relying on such report, the learned Judge disposed of the writ petition without granting any effective relief to the writ petitioner. The writ petition was disposed of with the following observations :

“Thus, the allegation of the petitioner was found to be incorrect. However, if the petitioner is successful in any civil suit and his right, title and interest is declared over the portion where such urinal and vat has been constructed, the law will take its own course. As of now, without demarcation of the area of the petitioner and the area of the Refugee, Relief and Rehabilitation Department, Government of West

Bengal, no further directions can be issued by the writ court.”

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

We have heard learned counsel for the appellant/writ petitioner and learned counsel for the State. The report of the concerned Block Development Officer, primarily on the basis whereof the learned Judge disposed of the writ petition, reads as follows :-

“The statements of the petitioner are purely false and fabricated. His shoe shop of the petitioner runs near Jirat Rly. Station, namely, “Beauty Shoe” and far from Plot No.608 of Jirat Mouza (J.L. No.109). The plot is low land, full of bushes and there is no structure of any shop (Photographs of the land and toilet are annexed as ‘A-1, A-2, & A-3’)

The Plot No.608 of Jirat Mouza is undivided joint property and no lawful physical demarcation is made till date. A portion of such plot (0.02 acre) is owned by Refugee, Relief and Rehabilitation Dept., Govt. of West Bengal (two R-O-R are attached as ‘A-4’ & ‘A-5’). Moreover, the petitioner

never started any construction on the plot as behind the newly constructed toilet on the space where old and damaged toilet and garbage vat were existed; there are lying low land and high drain for outlet of foul water of that area.

The petitioner was given opportunity to submit his representation by attending in the meeting, but failed and if the petitioner was admitted at District Hospital or other Hospital for his emergency is not know to us.

The portion of the land of petitioner where his house is situated far from the newly constructed toilet and on the land of R.R.R. Dept., so the allegation of the petitioner “a garbage disposal vat and public urinal have been constructed on the land of the petitioner” is purely false and fabricated and far from truth.”

Learned advocate for the appellant has pointed out certain discrepancies between the report and the annexures thereto. By annexing certain documents, the concerned Block Development Officer has tried to

buttress the statements made in the report. However, at least one such document being annexure A-5 to the report does not support the substance of the report. That annexure pertains to Dag No. 527 whereas the relevant Dag No. is 608. The report is even otherwise not happily worded.

Further, it appears that no hearing has been given to the appellant by any responsible officer in the administration. Learned advocate for the appellant candidly says that the appellant had received a notice of hearing from the concerned Block Development Officer way back in 2019 in connection with a different matter. However, the appellant could not attend because of medical reasons.

Be that as it may, we are of the view that a responsible officer of the State Government should grant an opportunity of hearing to the appellant and take an appropriate decision in the matter in accordance with law.

We, accordingly, direct the concerned Sub-Divisional Officer to treat the contents of the writ petition filed by the appellant as his representation and take a reasoned decision thereon in accordance with law within a period of eight weeks from the date of communication of this order along with a copy of the writ petition by the appellant to him, after affording an opportunity of hearing to the appellant or

his authorized representative. The order so passed shall be communicated to the appellant within a week from the date of the order.

We make it clear that we have not gone into the merits of the dispute between the parties. The concerned Sub-Divisional Officer being a responsible Officer of the State Government shall take an impartial decision in the matter in accordance with law. If the Sub-Divisional Officer finds substance in the grievance of the appellant, appropriate remedial measures shall be directed to be taken by him.

The report dated May 18, 2023, that was filed before the learned Single Judge is set aside.

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

MAT 1175 of 2023 is disposed of along with the application being I.A. No. CAN 1 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.)