

22.02.2023
Item No.3
Court No.6.
AB

M.A.T. 1228 of 2022

With

I A CAN 1 of 2022

I A CAN 2 of 2022

**Nowda Thana Ferry Service Cooperative
Society Limited & Anr.**

Vs

Murshidabad Patni Cooperative Society Ltd. & Ors.

Mr. Bikash Ranjan Bhattacharya, Sr. Adv,
Mr. Samim Ahammed,
Ms. Gulsanwara Pervin ...for the Appellants.

Mr. Lalit Mohan Mahata,
Mr. P. B. Mahata ...for the State.

Md. Sarwar Jahan,
Mr. Sirajul Haque Mondal,
Mr. Jayanta Samanta,
Mr. Sumit Masfear,
Mr. S. N. Thanderfor the Respondent No.1.

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

In re : CAN 1 of 2022

This is an application for leave to prefer appeal
against a judgment and order dated July 25, 2022.

The applicants were not parties to the writ
petition. However, we are satisfied that the order
impugned adversely affects the applicants.

Hence, leave is granted to prefer appeal against
the judgment and order dated 25.07.2022.

CAN 1 of 2022 is, accordingly, disposed of.

In re : MAT 1228 of 2022, CAN 2 of 2022

A judgment and order dated July 25, 2022, whereby the writ petition of the respondent no.1 herein being WPA 9316 of 2022 was disposed of, is the subject matter of challenge in this appeal.

The appellants draw our attention to an interim order dated May 14, 2013, passed by a learned Single Judge in an earlier writ petition filed by the appellants being W. P. No.12782 (W) of 2013. The said interim order reads as follows:

“Having heard the learned advocates for the parties and upon perusing the instant writ petition as well as the earlier orders passed by this Court and taking into consideration the order of the Division Bench dated 8th May, 2013, passed in connection with the instant matter, this Court is of the view that the matter is required to be heard on affidavits.

Accordingly, let affidavit in opposition be filed within a period of three weeks after summer vacation. Reply, if any, within a fortnight thereafter.

List this matter under the heading “For Final Disposal” in the monthly combined list to be published for the month of July, 2013.

In the meanwhile, the writ petitioner shall operate the ferry ghats in question, subject to payment of the Reserved Price as determined by the concerned Panchayat Samiti, which is contained in the notice dated 24th April, 2013, being annexure ‘P-7’ at page 93 of the writ petition.

Payment shall be calculated, with effect from 15th April, 2013, and paid by the writ petitioner to the concerned Panchayat Samiti within a fortnight from date, failing which, this interim arrangement shall stand automatically vacated.”

The appellants say that the said interim order is still in subsistence and W. P. No.12782 (W) of 2013 is still pending.

The impugned order was passed on the writ petition of the respondent no.1. The appellants herein were not parties before the learned Single Judge. It was submitted before the learned Single Judge that lease of the concerned eleven ferry ghats has expired on April 14, 2022 but steps have not been taken for holding fresh auction for settling the said ferry ghats. The erstwhile leaseholders (meaning thereby the present appellants) are running the ferry ghats without any formal extension of the lease.

Learned Judge disposed of the writ petition with the following directions:

“According to the provisions of law, the ferry ghats ought to be settled by way of open auction process so that any interested eligible participants may take part in the open auction process which is being conducted to generate revenue for the government.

The authority concerned ought not to permit the erstwhile leaseholders to continue running of the ferry ghats without any formal extension or without holding the open auction.

In view of the above, the respondent Nos.2, 3 and 4 are directed to take immediate steps for holding the open auction for settlement of the ferry ghats strictly in accordance with law, at the earliest, but positively within a period of four weeks from the date of communication of a copy of this order. It goes without saying that the tender shall be issued in favour of the highest bidder.”

Being aggrieved, the appellants are before us.

Mr. Bhattacharya, learned Senior Advocate appearing for the appellants says that since the order dated May 14, 2013, passed in the appellants’ writ petition, is still in operation, there could be no

question of holding fresh auction. That writ petition should first be disposed of first.

Mr. Mahata, learned Advocate for the State says that the said interim order dated May 14, 2013, spent its force upon expiry of the annual lease on March 31, 2014. Leases are granted for one year. Taking undue advantage of the said interim order, the appellants have continued to operate the concerned ferry ghats and are still doing so.

Md. Sarwar Jahan, learned Advocate appearing for the respondent no.1 says that the respondent no.1 was not a party in the appellants' writ petition. The respondent no.1 was not aware of the interim order dated May 14, 2013, passed in W. P. No.12782 (W) of 2013. Otherwise, surely attention of the learned Judge would have been drawn to such order.

Having heard learned Counsel for the parties, we are of the view that the learned Judge should decide both the writ petitions i.e., W. P. No.12782 (W) of 2013 and WPA No.9316 of 2022 together. An argument may be raised that the order under appeal herein is in conflict with the interim order dated May 14, 2013, passed in the earlier writ petition. We are not, for a moment, saying that such argument necessarily has merits. However, the learned Judge is requested to consider both the writ petitions simultaneously and dispose of the same in the manner Her Ladyship may deem fit and proper.

The order under appeal is, accordingly, set aside and the matter is remanded to the learned Single Judge having determination to hear the writ petition along with the earlier writ petition.

Mr. Mahata, learned Advocate for the State says that a fresh lease period will commence from the Bengali New Year day. He says that notice of fresh auction was published but has been kept in abeyance in view of the pendency of this litigation. He says that the learned Judge may be requested to dispose of the two writ petitions analogously before the end of March, 2023.

The appellants, of-course, dispute the submission that the lease in their favour will expire on March 31, 2023.

We are aware of the pressure of business on the learned Single Judge. However, the parties may request the learned Judge to give some priority to this matter and the learned Judge may consider such request if the business of the Court permits.

M.A.T. No.1228 of 2022 is, accordingly, disposed of along with IA CAN 2 of 2022.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)

