

08. 05.10.2023
Court No.6
.Tanmoy Ghosh

MAT 1374 of 2023

Rabindranath Pal
-Versus-
Debasish Bose & Ors.
With
IA No: CAN/1/2023
With
IA No: CAN/2/2023

Mr. Saibal Kumar Acharya, Adv.,
Mr. Debabrata Koley, Adv.,
Mr. Sukhendu Bikash Mukherjee, Adv.

...for the appellant.

Mr. Tanmoy Khan, Adv.

...for the respondent no.1/
writ petitioner.

Mr. Pritam Choudhury, Adv.,
Ms. Debleena Dasgupta, Adv.

...for the State.

Mr. Suman Basu, Adv.

...for the respondent nos. 3&4.

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

In Re: IA No: CAN/1/2023

This is an application for condonation of delay of
thirty eight (38) days in filing the appeal, as noted by
the Stamp Reporter. Causes shown being sufficient, the
delay is condoned. The application being IA No:
CAN/1/2023 is accordingly disposed of.

In Re: MAT 1374 of 2023
With
IA No: CAN/2/2023

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 May 17, 2023, whereby the writ petition of the respondent no.1 herein being WPA 11654 of 2023 was disposed of by a learned Single Judge of this Court. The appellant was the respondent no.7 in the writ petition.

The respondent no.1/writ petitioner approached the learned Single Judge with the complaint that the present appellant had raised a four-storeyed building on plot no. 2776/4551 of Mouza - Jalaghata, without any permission being obtained from the Competent Authority. The appellant herein denied such allegation. The Hooghly Zilla Parishad submitted that it could not come to a conclusion without making any enquiry.

The learned Judge disposed of the writ petition without going into the merits of the allegations and counter-allegations levelled by the parties against one another with a direction upon the Competent Authority of the Hooghly Zilla Parishad to consider the representation of the writ petitioner which was annexed at page 18 of the writ petition.

The learned Judge delineated certain steps to be followed by the Zilla Parishad while considering the writ petitioner's representation, e.g. holding joint inspection of the concerned site, preparing inspection report, making the same available to the parties, affording opportunity of hearing to the parties and then finally

passing a reasoned order. The entire exercise was directed to be completed within four months from the date of communication of the order. It was clarified that questions of right, title, interest, encroachment etc., shall not be gone into by the Zilla Parishad.

Being aggrieved, the respondent no.7 has come up by way of this appeal.

It is submitted by learned Advocate for the appellant that the respondent no.1 herein has no *locus standi* to maintain the writ petition. He is not an aggrieved party. He is not prejudiced in any manner by the building that has been constructed by the appellant. Secondly, learned Advocate for the appellant submitted that the learned Single Judge did not grant an opportunity to the respondent no.7 in the writ petition (appellant herein) to file affidavit before disposing of the writ petition.

We have not called upon learned Advocates for the respondents to make submissions.

Insofar as the question of *locus standi* is concerned, it is not disputed that the writ petitioner resides in the locality where the appellant resides and where he has made the alleged unauthorized construction.

In view of the decision of the Hon'ble Supreme Court in the case of ***Dipak Kumar Mukherjee – Vs. – Kolkata Municipal Corporation & Ors.***, reported in ***(2013) 5 SCC 336***, the principle of *locus standi* has

undergone a sea change and stands relaxed to a great extent where unauthorized construction is under challenge. We are of the opinion that the writ petitioner had every *locus* to maintain the writ petition.

Insofar as the question of granting an opportunity to the appellant herein to file affidavit is concerned, we are of the view that the course adopted by the learned Single Judge is a reasonable and prudent one and it was not necessary for the learned Single Judge to call for affidavits. After all, factual disputes would inevitably be involved which a writ Court cannot conveniently decide on affidavits. The Zilla Parishad is the appropriate Authority, which can go into the question of alleged unauthorized construction and the learned Judge rightly relegated the matter to the Zilla Parishad.

We do not see any infirmity in the order under appeal. The appellant and the writ petitioner/respondent no.1 herein will have full opportunity of participating in the proceedings before the Zilla Parishad and both of them will be at liberty to produce all documents as they may be advised, before the Zilla Parishad.

We do not interfere with the order under appeal. However, the time for the Zilla Parishad to complete the exercise, directed by the learned Single Judge, shall stand extended till December 31, 2023.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 1374 of 2023 and the connected application being IA No: CAN/2/2023 are disposed of.

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

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)