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09-01-2023
debajyoti
(Ct. no.06)

MAT 1290 of 2022
+
IA NO:CAN/1/2022
+
CAN/2/2022

Sahidul Molla
Vs.
Lal Mahammad Molla & Ors.

Mr. Dipankar Mondal
... For the Appellant.

Mr. A. P. Lahiri,
Mr. S. P. Lahiri
... For the State.

Ms. Maria Rahaman
... For Respondent No.10.

Affidavit-of-Service filed in Court today be taken on record. In spite of service, no one appears on behalf of the Respondent No.1/Writ Petitioner.

Re : CAN 1 of 2022

This is an application for condonation of delay in filing the appeal. Causes shown being sufficient, the delay is condoned.

The application being CAN 1 of 2022 is, thus, allowed.

Re : MAT 1290 of 2022 & CAN 2 of 2022

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

This appeal is directed against a judgment and order dated May 19, 2022, whereby the writ petition of the respondent no.1 herein was disposed of.

The respondent no.1 herein/writ petitioner approached the learned Single Judge with the grievance that the appellant herein, who was the respondent no.11 in the writ petition, has made unauthorized construction on the concerned plot of land without obtaining permission from the Panchayat Authorities. The further grievance was that there is an order of *status quo* in respect of the concerned plot passed by the Civil Court in a pending partition suit to which the appellant herein as well as the writ petitioner are parties. In violation of such order of *status quo*, the appellant herein has made construction, is the allegation of the writ petitioner.

Having heard learned counsel for the parties, the learned Single Judge directed that the issue of violation of the *status quo* order will have to be decided by the learned Civil Court in accordance with law. The Panchayat cannot decide such issue.

However, insofar as the allegation of the appellant herein having made construction without obtaining prior permission from the Panchayat Authorities is concerned, the same shall be looked into by the concerned Panchayat. The learned Judge disposed of the writ petition with the following observations:

“ However, without going into further details with regard to the allegations and counter-allegations, this court is of the view that the petitioner shall file a composite objection before the competent authority of the Salipur Gram Panchayat with specific allegations. If such application is filed, the same shall be disposed of in accordance with law and the panchayat authorities shall follow the procedure stated hereinbelow:

- a) Inspection of the construction shall be conducted in the presence of the petitioner, the respondent no.11 and other interested parties with 48 hours advance notice to the parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the respective premises.
- b) Reports shall be prepared and handed over to the petitioner and the respondent no.11.
- c) Thereafter, a hearing shall be given to the petitioner and the respondent no.11 and any other interested parties. The parties must also be allowed to furnish their written objection/version to the said reports and adduce oral and documentary evidence in support of their contentions, before the competent authority. Mr. Routh's contention that the construction was made by invoking the deeming provision shall also be considered.
- d) A reasoned order shall be passed and the communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of the statute with regard to the constructions.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

The court has not gone into the merits of the claims and counter-claims of the parties and the issues shall be decided independently. ”

Being aggrieved, the respondent no.11 in the writ petition has come up by way of the present appeal.

We have heard learned counsel for the parties. We do not find any infirmity in the order under appeal. The learned Judge has rightly observed that the issue regarding violation of the order of *status quo* passed by the learned Civil Court in the pending partition suit will have to be considered and decided by that Court. The issue of unauthorized construction having been made by the appellant herein without obtaining a sanctioned plan from the concerned Panchayat, will have to be decided by the Panchayat. The learned Judge granted liberty to the respondent no.1/writ petitioner to file a comprehensive application before the Competent Authority of the Salipur Gram Panchayat. The learned Judge has also laid down the procedure to be followed by the Panchayat for disposing of such application, if filed. The appellant herein has been given full opportunity of participating in the proceedings before the Panchayat. The appellant will be at liberty to try and impress upon the Panchayat that he has not made any unauthorized construction. The Panchayat shall naturally not go into the issue of violation of the order of *status quo* passed by the learned Civil Court. The Panchayat shall only consider the issue of whether or not the construction made by the appellant is in violation of Section 23 of the West Bengal Panchayat Act, 1973. The application, if filed by the respondent no.1/writ petitioner before the Panchayat, shall be disposed of by the Competent Authority in accordance with law, after observing the principles of natural justice without being influenced by any observation in the order of the learned Single Judge or in this order.

We see no reason to interfere with the order under appeal. The appeal and the connected application are, accordingly, dismissed.

Affidavits not having been called for, the allegations in the stay application shall be deemed not to have been admitted by the respondents.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)