

25.09.2023
Item No.02
Court No.6.
S. De

M.A.T. 1672 of 2023
with
I.A. No. CAN/1/2023
I.A. No. CAN/2/2023

Pallab Sarkar.
Vs
The State of West Bengal & Ors.

Mr. Robiul Islam,
Mr. Raju Mondal,
Mr. Jayed Hossain,
Mr. K.M. Hossain, ...for the appellant.

Mr. R. Mahato,
Mr. A.S. Ray, ...for the respondent no.9.

Mr. Sujay Bandyopadhyay,
Mr. Pradipta Siddhanta,
...for the Midnatore Municipality.
Mr. Jahar Dutta,
Mr. Benazir Ahmed,
...for the State respondents.

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

In re : I.A. No. CAN/1/2023

This is an application for condonation of delay of 101 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

I.A. No. CAN/1/2023 is, accordingly disposed of.

In re : MAT 1672 of 2023 & I.A. No. CAN/2/2023

By an order dated April 19, 2023, a learned Single Judge of this Court disposed of two writ petitions being WPA 25283 of 2022 (Pallab Sarkar Vs. The State of West Bengal & Ors.) and WPA 27873 of 2022 (Sudhangshu Sekhar De Vs. The State of West Bengal & Ors.)

Pallab had filed a writ application with the grievance that a building plan had been illegally sanctioned in favour of the private respondents, pursuant whereunto, constructions have been raised by the said respondents and such plan should be withdrawn/cancelled by the Midnapore Municipality.

Sudhangshu's contention in his writ petition was that the private respondents have made unauthorized construction in deviation from the sanctioned building plan.

By the judgment and order impugned in this appeal, those two writ petitions were disposed of with the following observations :

“Upon perusal of the documents placed before this Court and upon hearing the submissions made on behalf of all the parties it appears that the root of the issue is the quantum of land. The parties have disputes with regard to the area of land occupied.

Neither the Municipality nor the State respondents will be the appropriate body to decide the issue.

There are several disputed questions of facts which cannot be decided by the writ Court. Evidence is required to be adduced to come to a conclusion with regard to the quantum of land held by the parties.

In view of the above, both the writ petitions stand disposed of by granting liberty to the petitioners to approach the appropriate forum for declaration of their rights.

The Municipality will only ensure that no unauthorized construction is carried out at the subject premises.

Be it recorded that T.S. No.44 of 2021 has been filed by Sudhangshu against the private respondents and the State authorities. The said Suit is pending consideration.”

Being aggrieved, Sudhangshu had earlier come up against that order of the learned Single Judge by filing MAT 1086 of 2023. We had disposed of that appeal by observing that we found no apparent infirmity in the order under appeal and any challenge that Sudhangshu may throw to the order of the Municipality shall be decided in accordance with law.

Against the self-same order of the learned Single Judge, now Pallab has come up by way of this appeal.

Mr. Islam, learned advocate representing Pallab says that the building plan was obtained by the private respondents by making material misrepresentation

and/or practising fraud. Pallab has made a representation to the Board of Councillors of the Municipality for cancellation of such building plan. Such representation has still not been considered. The learned Single Judge ought to have directed the Municipality to dispose of such representation.

The respondents cannot possibly have any legitimate objection if we direct the Municipality to dispose of Pallab's representation in accordance with law. Needless to say, the private respondents will have full opportunity of participating in the proceedings before the Municipality.

Accordingly, we direct the Board of Councillors of Midnapore Municipality to dispose of the appellant's representation dated August 10, 2022, by a reasoned order, in accordance with law and the relevant Rules and Regulations, within a period of twelve weeks from the date of receipt of a copy of this order along with a copy of the representation of the appellant, after affording adequate opportunity of hearing to all concerned parties including the appellant and the private respondents herein. The Board of Councillors shall duly consider all documents that the parties may present before the Board. The decision taken by the Board of Councillors shall be communicated to the parties within a week from the date of the decision.

Depending on the decision, appropriate consequential steps may be taken by the Board of Councillors.

We make it clear that we have not gone into the merits of the disputes between the parties. The Board of Councillors of Midnapore Municipality shall take an informed decision in accordance with law uninfluenced by any observation made either in this order or in the order of the learned Single Judge which is under challenge in this appeal.

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

MAT 1672 of 2023 is disposed of along with the application being I.A. No. CAN 2 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.)