

23.
16-10-2023
(Ct. no.06)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**MAT 1774 of 2023
+
IA NO:CAN/1/2023
+
CAN/2/2023**

**Sudarsan Manna & Anr.
Vs.
Raja Chatterjee & Ors.**

Mr. Pingal Bhattacharyya,
Mr. Rajdeep Sinha

... For the Appellants.

Mr. Shuvashish Sengupta,
Mr. Aman Agarwal,
Mr. Dibyendu Mondal

... For Private Respondent.

Mr. Indranil Roy,
Mr. Tapas Ballav Mondal

... For the State.

Re : CAN 2 of 2023

This is an application for condonation of delay of 207 days, as per report of the Additional Stamp Reporter, in filing the appeal. Causes shown being sufficient, the delay is condoned.

The application being CAN 2 of 2023 is, thus, allowed.

Since no affidavits have been called for, the allegations made in the petition for condonation of delay are deemed not to be admitted by the respondents.

Re : MAT/1774/2023 & CAN/1/2023

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

A judgment and order dated January 16, 2023, whereby the writ petition of the respondent no.1 herein, being WPA 19758 of 2022, was disposed of by a learned Single Judge of this Court, is under challenge in this appeal, at the instance of the private respondents in the writ petition.

It appears that the respondent/writ petitioner approached the learned Single Judge with a grievance that the private respondents in the writ petition have made unauthorized construction at R.S. Dag No.429, Hal Dag No.457, comprising an area of 7 decimals under Mouza-Athligori, Police Station – Contai, Ward No.15, within the territorial limits of Contai Municipality. The writ petitioner complained that in spite of he having made a representation to the Contai Municipality, the same did not receive the attention of the authorities.

The learned Judge noted that nobody appeared before Her Ladyship on behalf of the private respondents (the appellants herein). However, the learned Judge did not defer the hearing of the writ petition, as in Her Ladyship's opinion, the order she proposed to pass, would not prejudice anybody. The learned Judge disposed of the writ petition with the following directions:

“ The writ petition is accordingly disposed of by directing the respondent no.6 to consider and dispose of the representation made by the petitioner strictly in accordance with law, after giving an opportunity of hearing to all the necessary parties including the petitioner within a period of three months from the date of communication of a copy of this order. The said respondent shall pass a reasoned order and communicate the same to all the

necessary parties including the petitioner immediately thereafter.

In the event the aforesaid respondent is of the considered opinion that the construction has been made either in violation of the plan sanctioned or devoid the sanction plan, then necessary steps shall be taken to deal with such unauthorized construction, in accordance with law.

The aforesaid respondent shall restrict the consideration of the representation with regard to unauthorized construction only and not enter into or decide any private dispute of the parties regarding right, title and interest in respect of the aforesaid land. ”

Being aggrieved, the private respondents in the writ petition have come up by way of this appeal.

Learned advocate for the appellants says that the matter was mentioned before the learned Single Judge at the instance of the writ petitioner and upgradation was obtained. However, the appellants were not intimated of such upgradation. That is the reason why the appellants could not be represented before the learned Single Judge when the matter was taken up for hearing and disposal.

We do not think that it is necessary to get into that controversy. We do not find anything prejudicial in the impugned order insofar as the appellants are concerned. The appellants will have full opportunity of participating in the proceedings before the Board of Councillors of the Municipality. Any inspection that may be held by the Board of Councillors or on its behalf, will be upon notice to the appellants as well as the writ petitioner. Due opportunity of hearing will be granted to the parties by the Board of Councillors. The parties will be at liberty to place

before the Board of Councillors such documents as they may be advised and the same will be duly considered by the Board of Councillors. The Board of Councillors shall pass a reasoned order in accordance with law within a period of three months from date. Needless to say, if the Board of Councillors finds merit in the complaint made by the writ petitioner, necessary steps will be taken by the Board in accordance with law.

With the aforesaid modification of the order impugned, the appeal and the connected application stand disposed of.

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

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

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

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)