

21.09.2023
Item No.06
Court No.6.
S. De

M.A.T. 1836 of 2023
With
I.A. No. CAN/1/2023

Arghya Pal & Anr.
Vs
The State of West Bengal & Ors.

Mr. S.T. Mina,
Ms. Priyanka Das,
...for the appellants/writ petitioners.

Mr. Swarup Banerjee,
Mr. Vivek Kr. Tripathi,
Mr. Partha Pratim Mukhopadhyay,
Ms. Muslima Begam,
...for the respondent no.9.

Mr. R.N. Chakraborty,
Mr. M. Ahmed,
...for the Municipality.

Mr. Avijit Sarkar,
Ms. Srijoni Mukherjee,
...for the State respondents.

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

This appeal is directed against a judgment and order dated August 3, 2023, whereby a learned Single Judge of this Court disposed of the writ petition of the appellants herein being WPA 18127 of 2023.

Earlier today, we disposed of another appeal being MAT 1837 of 2023. In that appeal the present appellants had challenged and order of a learned

Single Judge granting liberty to the parties to approach the concerned BL & LRO to measure a pathway which according to the appellants, is a private pathway, to find out whether there has been encroachment on the pathway by the appellants herein as was alleged by the writ petitioner in the earlier proceeding who is the respondent no.9 in the present appeal.

We disposed of that appeal by observing that since the order impugned in that appeal had been carried out by the BL & LRO, the appeal had lost its force.

It appears that pursuant to such measurement, the Maheshtala Municipality issued an order dated July 13, 2023, directing the appellants herein to vacate a two feet wide land as demarcated by the concerned BL & LRO by removing the boundary wall put up by the present appellants, to restore the original width of the passage in question. The order of the Municipality called upon the present appellants to take steps for demolishing the unauthorized construction, failing which the Municipality would demolish the same and realise the cost from the appellants herein.

Challenging such order of the Municipality, the appellants approached the learned Single Judge by filing WPA 18127 of 2023 in the present round of

litigation. It was submitted by the writ petitioner that prior to issuance of the demolition order, no opportunity of hearing had been afforded to the writ petitioners by the Municipality. It was admitted by the writ petitioner that spot inspection was held in their presence but thereafter that were not given an opportunity of being heard.

The learned Judge observed that the Municipality has not been able to demonstrate that any opportunity of hearing was given to the appellants prior to issuance of the demolition order. Accordingly, the learned Judge set aside the demolition order with the following observations and directions :

“In view of the above, the Court is of the opinion that the order impugned suffers from the vice of non compliance of the principles of natural justice.

The impugned order of demolition is, accordingly, set aside.

The Board of Councillors, Maheshtala Municipality is directed to issue fresh notice affording opportunity of hearing to the petitioners and all other necessary parties at the earliest but positively within a period of eight weeks from the date of communication of this order.”

Being aggrieved, the writ petitioners have come up by way of this appeal.

Learned advocate for the appellants says that the BL & LRO measured a wrong plot of land. Relying on such measurement, the Municipality issued the demolition order. This is wholly wrongful.

Learned advocate for the respondent no.9 herein submits that the Board of Councillors has fixed a hearing tomorrow (September 22, 2023), in terms of the order of the learned Single Judge assailed in this appeal. He submits that no interference is warranted with the order of the learned Single Judge.

Having considered the rival contentions of the parties, we are of the view that the parties should attend the hearing before the Board of Councillors of Maheshtala Municipality, which has been fixed tomorrow (September 22, 2023). The appellants would be at liberty to urge all points before the Board of Councillors including the point of measurement of a wrong plot of land by the BL & LRO. We make it clear that we have not considered the merits of the case at all. The Board of Councillors shall take an independent decision in the matter in accordance with law, observing the principles of natural justice. If the Board of Councillors deems it necessary, they would be at liberty to adopt such measure as they think is necessary for disposing of the matter.

Learned advocate for the appellants draws our attention to a representation dated July 11, 2022, made by the respondent no.9 herein to the Municipality, complaining that encroachment has been made on plot no.526. This factor has not been considered by the Municipality before issuing the demolition order, says learned counsel for the appellants. This submission is denied and disputed by learned advocate for the respondent no.9.

We are not inclined to go into this factual dispute. The parties will be at liberty to have the same thrashed out before the appropriate forum. The Municipality will be at liberty to consider the representation referred to above. The respondent no.9 will also be at liberty to make such submission as they may be advised in respect of such representation.

We make it clear that we have not gone into any of the factual disputes involved in this matter. The parties will be liberty to have such disputes resolved in accordance with law before the appropriate forum.

We see no reason to interfere with the order of the learned Single Judge. With the aforesaid observations, the appeal being MAT 1836 of 2023 is disposed of along with the application being I.A. No. CAN 1 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.)