

21.09.2023
Item No.07
Court No.6.
S. De

M.A.T. 1837 of 2023
With
I.A. No. CAN/1/2023
I.A. No. CAN/2/2023

Prabir Pal & Anr.
Vs
The Maheshtala Municipality & Ors.

Mr. S.T. Mina,
Ms. Priyanka Das,
...for the appellants/respondent
nos. 6 & 7.
Mr. Swarup Banerjee,
Mr. Vivek Kr. Tripathi,
Mr. Partha Pratim Mukhopadhyay,
Ms. Muslima Begam,
...for the respondent no.6.
Mr. R.N. Chakraborty,
Mr. M. Ahmed, ...for the Municipality.
Ms. Kakali Samajpaty,
Ms. Supriya Majumder,
...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
239 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 1837 of 2023 & I.A. No.
CAN/2/2023

This appeal is directed against a judgment and order dated December 20, 2022, passed in WPA 20924 of 2022, which was a writ petition filed by the respondent no.6 herein.

It appears that the respondent no.6 herein approached the learned Single Judge with the grievance that the private respondents in the writ petition who are the present appellants, have made construction by encroaching upon private pathway. Learned advocate representing the private respondents in the writ petition denied such allegation. It was submitted on their behalf that they have constructed a boundary wall on their private property.

Learned advocate for the Municipality submitted that inspection was conducted upon notice to all parties and they were present at the site at the time of inspection. It appeared that there is an existing passage approximately measuring about ten feet to twelve feet in width. However, presently it appears that the passage is only six to seven feet in width. The Municipality said that the width cannot be ascertained by the Municipality. Assistance of the BL & LRO is required for that purpose. The learned Single Judge disposed of the writ petition by granting liberty to the parties to approach the concerned BL & LRO with request for measurement of the passage/pathway as per the mouza map.

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

Learned advocate for the appellants says that since the pathway is a private one, the BL & LRO has no jurisdiction or power to do anything in connection with such pathway including taking measurement.

Learned advocate for the respondent/writ petitioner as well as learned advocate for the State say that the measurement has already been taken by the BL & LRO and, therefore, the order impugned has been carried out. Nothing remains in this appeal.

Learned advocate for the appellants says that the BL & LRO measured a wrong plot bearing LR Dag No.548 when the plot in question bears Dag No.526. This submission is strongly disputed by learned advocate for the respondent/writ petitioner.

Be that as it may, we find that the order under appeal has been implemented. Nothing remains in this appeal. The appellants will be at liberty to urge the point of measurement of wrong plot of land before the appropriate authority.

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

MAT 1837 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.)