

13-14 15.06.2023
 RP Ct. No. 01
 AN

MAT 1708 of 2022
 with
 IA No. CAN 1 of 2022
 CAN 2 of 2022
 Arup Kumar Das & Ors.
 Vs.
 Hemlata Ghosh & Ors.

With

MAT 2050 of 2022
 State of West Bengal & Ors.
 Vs.
 Hemlata Ghosh & Ors.

Ms. Pampa Dey (Dhabal)
 Ms. Bansori Mandal
 ... For the Appellants (MAT 1708 of 2022)

Mr. Shyamal Kumar Bhattacharya
 ... For respondent no.1/writ petitioner

1. We have heard learned counsel for the parties at length.

2. This intra-Court appeals are directed against the judgment dated 23rd September, 2022 passed in WPA 11025 of 2022. The operative portion of the judgment is as follows:

“8. WPA 11025 of 2022 is accordingly disposed of with a direction on the Chief Engineer, Irrigation and Waterways Directorate/Department, Government of West Bengal, to forthwith inspect the breaches caused to the embankment of the Bidyadhari river as recorded in the Report of the learned Advocate Commissioner and coordinate with the concerned State Officials to fill up and repair the breaches. The concerned State respondents shall also ensure that the water of the Bidyadhari river is drained out of the petitioner’s land at regular intervals so as to ensure that the petitioner can carry out paddy cultivation on her land without any obstruction, natural or man-made. The

exercise as directed shall preferably be completed within a period of 10 weeks from today. The drainage of water from the land of the petitioner shall be done within 6 weeks from today. The Police authorities are directed to maintain continuing and intensified vigil in the area to ensure that no person or authority indulges in any act of causing any form or breach or opening in the embankment which would result in flooding of the area with the saline waters of the Bidyadhari river. The learned Advocate Commissioner is discharged.”

3. The State is aggrieved by the said order by raising certain factual allegations. There are private parties, who are stated to be the adjoining land owners, have also filed an appeal, being MAT 1708 of 2022. The allegations made by the State in its appeal is that the respondent no.1 herein, one Hemlata Ghosh, herself and her family members executed several agreements with local fishermen and received rent from those fishermen out of the fishery activity. Therefore, the prayer sought for in the writ petition was liable to be dismissed. Further, the State would contend that the writ Court ought to have appreciated the fact that the interest of the adjoining land owners would be vitally affected if the orders and directions issued in the writ petition are complied with. Further, it is submitted that the closure of the breaches might be detrimental to the livelihood of the several people of the area.

4. We find that during the pendency of the writ petition an Advocate Commissioner was appointed, who had filed a report and it appears that no objection was filed to the report and based on the said report, direction has been

issued. It is submitted by the learned advocate for the appellant in MAT 1708 of 2022 that already this issue was considered by the Sub-Divisional Officer and after hearing the parties a reasoned order was passed. The learned advocate appearing for the appellant in MAT 1708 of 2022 submitted that there is also a report of the Sub-Divisional Officer. In our considered view, before the order and direction issued by the writ Court is to be complied with an enquiry has to be conducted and without conducting an enquiry if the order and direction is to be implemented then it may tantamount to not hearing the aggrieved persons. Therefore, by this order we modify the order and direction issued in WPA 11025 of 2022 to the following effect that the Chief Engineer, Irrigation and Waterways Directorate, Government of West Bengal is directed to afford an opportunity of hearing to the respondent/writ petitioner and their family members as well as the appellants in MAT 1708 of 2022 and all other persons, who are likely to be affected by issuing notices to them and after considering their grievances and perusing the report submitted by the Advocate Commissioner and any other report which may be on record as submitted by the Sub-Divisional Officer and after conducting a detailed enquiry the Chief Engineer, Irrigation and Waterways Directorate, Government of West Bengal shall pass a reasoned order on merits and in accordance with law and shall communicate the same to the respondent/writ petitioner as well as the appellant in MAT 1708 of 2022. The above direction be complied with

within a period of two months from the date of receipt of the server copy of this order. The respondent/writ petitioner is entitled to place all material documents in support of her case as it is submitted by the learned advocate for the respondent/writ petitioner that there are two judgments of the Hon'ble Division Bench of this Court concerning the matters. Copies of those judgments shall also be placed before the authority for consideration. According to the learned advocate for the respondent/writ petitioner, the issue has already been settled in the decisions of the Hon'ble Division of this Court. This aspect is also to be specifically considered by the Chief Engineer.

5. Hence, both the appeals and the connected applications stand **disposed of** however without any order as to costs.

(T. S. Sivagnanam)
Chief Justice

(Uday Kumar, J.)