

09. 02.08.2023
Court No.6
Tanmoy Ghosh

RVW 223 of 2022

**Hasen Ali Sk.
-Versus-
State of West Bengal & Ors.**

**With
IA No: CAN/1/2022
With
IA No: CAN/2/2022
With
IA No: CAN/3/2022**

**Arising out of
FMA 633 of 2022**

Mr. Pinaki Dhole, Adv.

...for the review petitioner.

Mr. Soumitra Banyopadhyay, Adv.,
Mr. Aniruddha Sen, Adv.

...for the State.

Mr. Gour Baran Sau, Adv.

...for the respondent nos. 8-10 &
14-17.

In Re: IA No: CAN/1/2022

This is an application for condonation of delay in filing an application for review of a judgment and order dated March 2, 2020, signed on August 24, 2022. The order was pronounced in open Court on March 2, 2020 but was inadvertently not signed by the Hon'ble Judges. The order was signed by two other Judges, who are the members of the present Bench, on August 24, 2022, since the two Hon'ble Judges who had pronounced the judgment in open Court, were no longer available in this Court.

In the peculiar facts and circumstances of the case, we are satisfied with the explanation furnished by the review applicant for the delay in filing the review application. The delay is condoned. The application being IA No: CAN/1/2022 is accordingly disposed of.

In Re: IA No: CAN/3/2022

This is an application for recording the death of the respondent nos. 11 (Saukat Sk.) and 13 (Sojan Bibi) in the review application.

The application is allowed.

The department is directed to make appropriate amendment to the cause title of the Memorandum of Review and the connected applications within a fortnight from date.

The application being IA No: CAN/3/2022 is accordingly disposed of.

In Re: RVW 223 of 2022
With
IA No: CAN/2/2022

This is an application for review of the judgment and order pronounced in open Court on March 2, 2020, in MAT 23 of 2020 (subsequently re-numbered as FMA 633 of 2022) but signed subsequently by two other Judges on August 24, 2022.

The appellant, who is the review applicant herein, had made a representation dated June 1, 2017 to

various Authorities including the *Pradhan* of the concerned *Gram Panchayat* contending that certain miscreants were raising construction on a vested property in such manner that ingress to and egress from the appellant's property was being obstructed. According to the appellant, such construction was being raised without obtaining requisite plan from the concerned *Panchayat*.

Alleging inaction on the part of the addressees of such representation, the appellant approached a learned Single Judge in the writ jurisdiction by filing W.P. 18945(W) of 2017. Such writ application was disposed of by an order dated August 9, 2017, whereby the concerned Sub-Divisional Officer (SDO) was directed to take a decision on the appellant's representation, in accordance with law, after giving an opportunity of hearing to the concerned parties.

Pursuant to such order, the concerned SDO passed an order dated March 16, 2018. The SDO refused to interfere in the matter primarily because the instrument by which the land in question had been transferred, was under challenge before a civil Court. The SDO opined that until the civil Court decides the matter, it would not be prudent for him to give any direction.

The SDO's order was challenged by the appellant in the second round of litigation by filing W.P. 7460(W)

of 2018. The learned Single Judge declined to interfere with the SDO's order dated March 16, 2018, on the grounds, firstly, because disputed questions of fact are involved; and secondly, a suit is pending before the competent civil Court wherein a registered instrument of transfer of a piece of land by the private respondents in the writ petition to a particular *Masjid* was under challenge.

The order of the learned Single Judge was carried in appeal by the writ petitioner by filing MAT 23 of 2020.

The said appeal was dismissed by a co-ordinate bench with the following observations:-

“9. *It is true, as has been contended by Mr. Dhole, that the SDO did not consider the allegation of unauthorised construction. We were minded to make an appropriate direction in that behalf but the Record of Rights, at page 71 of the stay application, persuaded us to think otherwise. In the complaint dated 1st June, 2017, it is the admitted case of the appellant that plot nos. 291, 291/611 and 291/612 are vested property and using the same he sought access to reach his property. It is also the admitted case of the appellant that his name has been recorded in the Record of Rights as “possession without permission”. However, it appears from page 71 that one Jafur Sk. has been in illegal occupation of plot no. 291/612 (বেআইনি দখলদার). We have noted from the cause title of the memorandum of appeal that ‘Hasen Ali Sk.’, i.e., the appellant is also known as Jafur Sk.*

10. *Once it is found that the appellant has been illegally occupying vested property, we do not consider it proper to exercise discretion in his favour. Writ remedy is not intended to facilitate grant of relief to a party who himself occupies a land illegally and then complains of illegality, allegedly committed by others.*

11. *It is also clear that the appellant is claiming easement right and if there is any obstruction to enjoyment of*

such right by him at the instance of private parties, the right to relief lies in instituting a suit before the competent civil court having jurisdiction.”

The aforesaid order dated March 2, 2020/August 24, 2022, is under review in the present application.

The short case of the review applicant is that there is an error apparent on the face of the order. The appellant is not in illegal possession of any plot of land. Jafur Sk. was shown in the Record-of-Rights as being in illegal possession of certain plots of land. Jafur Sk. was the father of the review applicant. In the complaint made by the review applicant, there is no admission that he is in occupation of any plot of land illegally or without permission of the Competent Authority. The co-ordinate Bench dismissed the appeal solely on the basis that the review applicant/appellant having committed illegality, is not entitled to any equitable relief from a writ Court. In other words, the entire judgment is based on wrong factual premises.

We have gone through the records of the case. The review applicant seems to be right. Jafur Sk. was the father of the review applicant. Further, there is no admission in the complaint dated June 1, 2017, filed by the present applicant that he is in illegal occupation of any plot of land.

We see from the judgment under review that the co-ordinate Bench was minded to remand the matter to the appropriate Authority since the question of alleged

unauthorized construction had not been considered by the Authority in view of pendency of the civil suit. However, solely on the basis that the applicant is in illegal possession of certain lands, the relief was denied.

We are of the view that there is an error apparent on the face of the order under review. Ends of justice warrant that this review application be allowed and we do so.

We modify the order under review to the extent that the issue of illegal construction made by the private respondents as complained by the review applicant/appellant be remanded to the concerned SDO who shall take a fresh decision in the matter, after hearing the review applicant/appellant and the private respondents or their authorized representatives. A reasoned order shall be passed, in accordance with law. The SDO will not enter into any disputed question of title to the land in question. He will decide as to whether or not there is merit in the grievance of the present applicant/appellant that the private respondents have made unauthorized construction without obtaining requisite sanction from the concerned *Panchayat*. Let the exercise be carried out by the concerned SDO within eight weeks from the date of receipt of a copy of this order along with a copy of the complaint dated June 1, 2017 that had been filed by the present applicant.

The application for review being RVW 223 of 2022 along with the connected application being IA No: CAN/2/2022 are accordingly disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Rai Chattopadhyay, J.)