

11. 16.01.2023
Ct. No.6
Tanmoy

MAT 1833 of 2022

**Shri Ramchandra Debnath
-Versus-
The State of West Bengal & Ors.**

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

Mr. Tulshi Das Roy, Adv.,
Mr. Tapan Roy, Adv.
...for the appellant.

Mr. Rama Prasad Sarkar, Adv.,
Mrs. Debarati Sen (Bose), Adv.

...for the State.

Affidavit of service filed in Court today be kept with
the records.

In Re: IA No: CAN/1/2022

This is an application for condonation of delay of
twenty nine (29) days in filing the appeal, as noted by the
Stamp Reporter. Causes shown being sufficient, the delay
is condoned. The application being IA No: CAN/1/2022 is
accordingly disposed of.

In Re: MAT 1833 of 2022

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

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

It appears that the envelope sent to the private
respondent has come back with the postal endorsement,

“insufficient address”. Learned Advocate for the appellant says that the address, to which the envelope was sent to the private respondent, is the address that is appearing in the writ petition.

In view of the order that we propose to pass, which according to us, will not prejudice any party, we are not inclined to defer hearing of this matter.

The writ petitioner had approached the learned Single Judge with the case that he is a co-owner of land in *Dag* No. 263 along with the private respondent. The grievance of the writ petitioner is that the private respondent has made construction in the undivided portion of land, without obtaining sanctioned plan from the Contai Municipality, and has ousted him from the said land. He also submitted that he has made a representation to the Municipality, but the same has not been considered till date.

Learned Advocate for the private respondent had submitted before the learned Single Judge that there are several occupiers of the aforesaid *Dag*.

The learned Judge observed that the dispute between the parties is civil in nature and it will not be proper for the Contai Municipality to enter into the dispute and restore possession to the writ petitioner. Liberty was granted to the writ petitioner to approach the appropriate civil forum. The writ petition was disposed of in those terms.

Being aggrieved, the writ petitioner is before us by way of this appeal.

We agree with the learned Single Judge that the Municipality cannot go into the question of ownership of or title to land or alleged dispossession of the writ petitioner from the land in question. However, the grievance of the appellant/writ petitioner that the private respondent has made construction without obtaining sanctioned plan may be looked into by the Municipality.

Accordingly, we direct the respondent no.3, being the Chairman of Kanthi Municipality, to consider the grievance of the appellant/writ petitioner that the private respondent has made unauthorized construction without obtaining sanctioned plan therefor from the Municipality. We clarify that the Municipality shall only consider the aforesaid issue and will not go into the question of title/ownership of land or any other issue. The respondent no.3 shall take a reasoned decision in the matter, in accordance with law, after giving an opportunity of hearing to all concerned parties including the appellant and private respondent herein, within a period of four (4) weeks from the date of communication of this order. If the respondent no.3 finds that the private respondent has constructed structures without obtaining sanctioned plan, the respondent no.3 shall take appropriate steps, in accordance with law.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 1833 of 2022 and the connected application being IA No: CAN/2/2022 are disposed of.

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

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)