

07. 10.01.2023
Ct. No.6
Tanmoy

MAT 1854 of 2022

**Md. Mujibar Rahaman Molla
-Versus-
The State of West Bengal & Ors.**

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

Mr. Mohinoor Rahaman, Adv.,
Ms. Maria Rahaman, Adv.,
Ms. Iqra Rahaman, Adv.

...for the appellant.

Mr. Lalit Mohan Mahata, Ld. AGP,
Mr. P.B. Mahata, Adv.

...for the State.

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

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

This appeal is directed against a judgment and order dated November 16, 2022, whereby the appellant's writ petition being WPA No. 23724 of 2022, was disposed of by a learned Single Judge.

Admittedly, a partition suit being Title Suit No. 18 of 1987, instituted by the appellant's father in the year 1987, is pending before the learned Civil Judge (Senior Division), Barasat, North 24-Parganas. The private respondents herein are the defendants in such suit. A preliminary decree has been passed in the partition suit. The appellant

says that Lot 'A' has been given to the appellant's branch and Lot 'B' has been given to another plaintiff's branch, in preliminary forum. The private respondents are co-sharers in the property.

The grievance of the appellant is that the private respondents have built a house on Lot 'A', which has been allotted to the appellant's branch. The appellant had earlier approached this Court twice. First, the appellant's father Md. Liyakat Ali Molla had approached this Court by filing W.P. No. 27874 (W) of 2015, complaining of Police inaction and also that the respondent Authorities have allowed the private respondents to construct on a land which has been declared by the civil Court to be a plot belonging to the writ petitioner therein. The said writ petition was disposed of by an order dated December 18, 2015, whereby the Police Authorities were directed not to permit any construction to be carried out by any person other than the plaintiff in Title Suit No. 18 of 1987, on the plot in question.

The appellant's father again approached this Court by filing W.P. 25625 (W) of 2016, complaining that the unauthorized construction made by the private respondents had still not been demolished by the concerned Authorities. Such writ petition was disposed of by granting liberty to the writ petitioner to agitate the issue before the appropriate Authority, in accordance with law. From the said order, an appeal was preferred being MAT 1295 of 2017. The appeal was dismissed by an order dated

September 14, 2022, passed by a co-ordinate Bench of this Court.

The appellant says that thereafter he has made representations to the Authorities and in particular, he has made a representation dated September 28, 2022, to the District Magistrate, North 24-Parganas.

Before the learned Single Judge the prayer of the appellant/writ petitioner was manifold. The learned Single Judge did not grant such prayers. The learned Judge granted liberty to the writ petitioner to approach the appropriate forum with regard to the alleged illegal construction. The learned Judge recorded that in Her Ladyship's opinion, the appropriate forum in the facts of the case would be the civil Court before which the partition suit is pending.

Being aggrieved, the writ petitioner is in appeal before us.

Learned Advocate for the appellant/writ petitioner says that the appellant has been running from pillar to post to get justice. Now that he has made a representation to the District Magistrate of North 24-Parganas, who is the Administrative head of the district, such representation should be considered.

We see no harm in directing the District Magistrate to consider such representation.

Accordingly, the District Magistrate, North 24-Parganas, being the respondent no.2 herein, is directed to

consider the appellant's representation dated September 28, 2022, in accordance with law and dispose of the same by a reasoned order within a period of eight (8) weeks from the date of communication of this order, after giving an opportunity of hearing to all concerned parties including the appellant/writ petitioner herein, the private respondents herein and the *Pradhan* of the concerned *Gram Panchayat*. The order so passed shall be communicated to the concerned parties within a week from the date of the decision. It is made clear that the District Magistrate/respondent no.2 naturally shall not be entitled to decide questions of title. If the respondent no.2 finds substance in the grievance made by the appellant, he shall take necessary steps so that the appellant's grievance may be redressed.

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 1854 of 2022 and the connected application being IA No: CAN/1/2022 are accordingly disposed of.

Let urgent photostat certified copies 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.)