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24.11.2023
Ct. No. 11
rrc

MAT 2237 of 2023
with
IA No. CAN 1 of 2023
(Manindranath Biswas Vs. State of West
Bengal & Ors.)

Mr. Shibaji Kumar Das
..... For the appellant

Mr. Jayanta Samanta
Mr. Pritam Choudhury
..... For the State

Mr. Timiar Baran Saha
..... For the respondent no. 9

The present appeal has been preferred challenging an order dated 11th October, 2023 passed by the learned Single Judge in a writ petition being WPA 21079 of 2023.

Mr. Das, learned advocate appearing for the appellant/writ petitioner submits that the writ petition was preferred challenging an order dated 14th August, 2023 passed by the respondent no. 3 together with a direction for consideration of the representation submitted by the appellant to the respondent no. 2 in terms of the provisions of Section 10(4) of the West Bengal Highways Act, 1964 (hereinafter referred to as the said Act).

According to Mr. Das, the learned Judge erred in law in observing that there is no infirmity in the order passed by the respondent no. 3 without directing consideration of the statutory appeal preferred by the appellant before

the respondent no. 2 on 23rd August, 2023, i.e., within a period of 15 days from the date of issuance of the order passed by the respondent no. 3 on 14th August, 2023,

He further submits that the respondent no. 5 has already issued a memo dated 3rd October, 2023 seeking police help. In the event the order impugned in the present writ petition is not set aside, the appeal pending before the competent authority would become infructuous.

He further submits that the tea stall is not situated over the PWD land and there has been no encroachment of the PWD Road. The earning from the said tea stall is the sole source of his livelihood and the demolition of the same would cause severe civil consequences. Reliance has been placed upon a judgment delivered by the Hon'ble Supreme Court in the case of *Mool Chand Yadav & Anr. Vs. Raza Buland Sugar Company Limited, Rampur & Ors.* reported in (1982) 3 SCC 484.

Mr. Samanta, learned advocate appearing for the State respondents submits that no proper appeal has been preferred by the appellant before the respondent no. 2 save and except a representation dated 23rd August, 2023. The respondent no. 3 upon hearing the parties passed a reasoned order on 14th August, 2023 and there is no infirmity in the same.

Drawing our attention to a representation submitted by the appellant to the respondent no. 5, Mr. Saha,

learned advocate appearing for the respondent no. 9 submits that the appellant had admitted that he is running a tea stall in a room which is situated at PWD land.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Section 10(4) of the said Act runs as follows:-

‘10(4). If the person responsible for the encroachment is aggrieved by the order of the Magistrate made under sub-section (3) he may, within fifteen days from the date of the Magistrate’s order, appeal to the District Magistrate. The District Magistrate shall, after hearing the parties, make an order affirming, modifying or setting aside the order made under sub-section (3).’

It appears that after the order dated 14th August, 2023 was passed by the respondent no. 3, the appellant submitted a representation before the respondent no. 2 ventilating his grievances and the same has not yet been disposed of by the respondent no. 2 in terms of the provisions of Section 10(4) of the said Act.

In the writ petition itself, the appellant annexed the representation dated 23rd August, 2023 in support of the contention that aggrieved by the order of the respondent no. 3 on 14th August, 2023, he had approached the appellate authority. The said representation has not yet been disposed of by the competent authority being the respondent no. 2 till date. In view of pendency of the said representation before the appellate authority, the learned

Single Judge ought not to have made observations in support of the order dated 14th August, 2023 passed by the respondent no. 3 which would have the effect of rendering the said representation, pending consideration before the respondent no. 2, infructuous.

Accordingly, we direct the respondent no. 2 to consider the appellant's representation dated 23rd August, 2023 in strict consonance of the provisions of the said Act and to pass a reasoned order, in accordance with law, without being influenced by the observations made by the learned Single Judge in the order impugned in the present appeal and to communicate the same to the appellant and the private respondent no.9, within a period of six weeks from date.

Till such order is passed and communicated, the order of the respondent no. 3 dated 14th August, 2023 shall not be given effect to.

With the above observations and directions, the appeal and the connected application are disposed of.

There shall, however, be no order as to costs.

The appellant is directed to immediately communicate this order to the respondent no. 2 along with a copy of the writ petition within a period of a week from date.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Uday Kumar, J.)

(Tapabrata Chakraborty, J.)

