

D/L
Item No. 9
25.04.2023
KOLE

**MAT 2075 of 2022
With
IA No. CAN 1 of 2023**

**Sanjib Bhattacharyya
-Vs.-
The State of West Bengal & Ors.**

*Mr. Sakya Sen,
Mr. Arindam Paul,*

...for the appellant.

Mr. Sonal Sinha,

...for the respondent no. 11.

*Mr. Suddhasatva Banerjee,
Mr. S. Dutta,
Ms. Rituparna Chatterjee,
Mr. S. Nayek,*

...for the respondent no. 12.

*Mr. Sayantan Bose,
Mr. A. Mookherjee,
Mr. Sattik Raut,*

...for the respondent no. 13.

A judgment and order dated September 22, 2022, *interim* in nature in the sense that the writ petition is still pending, is under challenge in this appeal.

It appears that on an earlier occasion the appellant herein had approached a learned Single Judge of this Court with the grievance that the private respondent no. 12 is making unauthorized construction on the concerned plot of land without obtaining requisite conversion. The learned Single Judge relegated the matter to the Additional District Magistrate, North 24 Parganas, for taking a decision in the matter.

The Additional District Magistrate, after hearing the parties passed an order dated March 15, 2022, holding that

there is a sanctioned plan in respect of the impugned construction. This order of the Additional District Magistrate was challenged by the appellant herein before the learned Single Judge in the present round of litigation.

The learned Judge directed exchange of affidavits observing that the issues raised in the writ petition involved mixed questions of law and facts. The learned Judge observed that there is no scope of any interim order in view of the specific finding of the Additional District Magistrate that sanction had been granted in accordance with law and the building was also constructed in accordance with law.

Appearing for the appellant, Mr. Sakya Sen, learned Counsel says that it was really not necessary to direct exchange of affidavits. The order of the Additional District Magistrate must stand or fall on its own strength. The respondent no. 12 is merrily carrying on with unauthorized construction. Some restraint order ought to be passed.

We are told that exchange of affidavits in respect of the writ petition is complete. We are not inclined to interfere. The learned Judge has not decided anything finally.

However, seeing the anxiety of the appellant and his apprehension that the private respondent no. 12 is carrying on with unauthorized construction and is in the process of creating third party rights in respect thereof, which is of course disputed by learned Advocate for the private respondent no. 12, we request the learned Single Judge to give some precedence to the present writ petition to the extent, the business of the court may permit. Needless to

say, any action taken by the respondents during the pendency of the writ petition will abide by the result of the writ petition.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted by the respondents.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)