

Item no.12
14.06.2023
sb & Saswata

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

**MAT 44 of 2023
with
IA no. CAN 1 of 2023
&
IA no. CAN 5 of 2023**

**Bijan Sarkar @ Bijon Sarkar
-versus
Sourav Das & Ors.**

Mr. Jagriti Mishra
Mr. D.K.Agarwal
Ms. Ananya Bhattacharya
Ms. Mrinmayee Das
Mr. Debayan Goswami
Mr. S. Gupta
Mr. Reshab Kumar

...For the appellant

Mr. Ayan Banerjee
Mr. Proshit Deb
Mr. Dipayan Kundu

...For the respondent nos. 1 and 2

Mr. Subir Kumar Saha
Mr. Momenur Rahaman

...For the State

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

The Learned Counsel for the appellant submits that the appellant was unable to produce sufficient documents before the Coordinate Bench when this application for extension of the interim order was rejected by the Coordinate Bench.

The Coordinate Bench rejected the application for extension of the interim order on the ground that the documents disclosed by the appellant/applicant were certificates of enlistment and mutation certificate. In this

application the appellant/applicant has relied upon the letter purported to have been addressed by the owner of the property in favour of the Project Director, National Highways Authority of India, claiming that the said authorities have encroached upon the land of one, Santosh Kumar Ghosh which would be evident from the document in his possession and that he is in possession of the land since 1967 and a portion of the said land is now sought to be encroached by the National Highways Authority of India for expansion of the national highway.

Learned Counsel for the appellant/applicant submits that the land in question is sold in his favour and in this regard he has relied upon one document purported to have been signed by Santosh Kumar Ghosh on 20th March 1987. It is further submitted that the appellant/applicant is the son of Biplab Sarkar. However, from the petition it appears that he is the son of Bikram Sarkar.

Moreover, the document on which reliance is placed is an unregistered document. The said alleged transaction appeared to have taken place on 20th March, 1987. Santosh Kumar Ghosh asserted his right over the property in question on 13th March, 2018, where it has been stated that he sold the property on a stamp paper in favour of Biplab Sarkar and Bikram Sarkar. The name of the appellant/applicant has not been named in the said document at all.

In any event, the record of rights does not show the name of the appellant/applicant nor there is any document

of any payment of land revenue by the appellant/applicant to the appropriate authority. It appears that on 21st March 2023 the Coordinate Bench recorded the submission of Mr. Sengupta and Mr. Majumder which reads as follows:-

“Mr. Sengupta, learned Advocate, appearing for the State says that first it has to be ascertained as to whether the land on which it is alleged that the appellant has encroached belongs to the State of the Municipality or whether it is part of a National Highway. If the land belongs to the State, or is part of a State Highway, proceedings will have to be initiated under the West Bengal Highways Act, 1964. If it is found that the land in question belongs to the Municipality, the proceedings will be under the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1992. If it is found that the land is part of a National Highway, proceedings will have to be continued under Control of National Highways (Land and Traffic) Act, 2002. If the land in question belongs to more than one owner, due demarcation has to be made also. All these exercises will have to be undertaken before removing any unauthorized occupants from the land in question.

Mr. Majumder, learned Advocate, appearing for the appellant agrees with the aforesaid submission of Mr. Sengupta.”

Thereafter, in the subsequent order dated 18th April, 2023 the following observation has been made:-

“It is clarified that pendency of the writ petition or the appeal will not stand in the way of the Competent Authority under the Control of National Highways (Land and Traffic) Act, 2002, in passing appropriate order since we are told that hearing has already been held before him and the appellant has also participated in such hearing.”

Before the Coordinate Bench, an application was filed for extension of interim order and the same was dismissed on recording that the applicant had failed to produce any document, *prima facie*, in support of ownership and/or title and in absence of such document, *prima facie* case had been

made out that the applicant is not entitled to further extension of interim order.

The prayer for extension of interim order was rejected subsequently on 18th May, 2023 with the observation that if there is material change in circumstances, the applicant may approach the Bench for further orders.

In this application, there is no material change in circumstances for which we may revisit the same issue. In any event, it has already been observed that the competent authority under the control of National Highways (Land and Traffic) Act, 2002 would consider the objection of the appellant/applicant and other aggrieved parties and decide the said matter in accordance with law. If any decision is adverse to the appellant/applicant, the appellant/applicant is not remediless.

On such consideration, we do not find any reason to extend the interim order and the said application stands dismissed.

It is submitted on behalf of the State that the final order has not yet been passed and demolition proceeding has not yet commenced. In the event, any final demolition order is passed the same shall be communicated to the appellant within 48 hours and shall not be implemented for a period of 7 days from the date of communication of this order.

In the event, any final order is passed against the appellant/applicant, it shall not be implemented for a period of one week from the date of communication of the said order.

The appeal and the connected applications stand disposed of.

Urgent photostat certified copy of this order is applied for, be given to the parties upon compliance with the necessary formalities.

(Soumen Sen, J.)

(Raja Basu Chowdhury, J.)