

05. 19.02.2024
Court No.6
(Tanmoy)

MAT 121 of 2023

The State of West Bengal & Ors.

-Versus-

Smt. Anjali Panja & Ors.

With

IA No: CAN/2/2023

Mr. Sk. Md. Galib, Adv.,
Ms. Ashmita Chakraborty, Adv.

...for the appellants.

Mr. Amit Kumar Pan, Adv.,
Mr. Subham Ghosh, Adv.

...for the respondents/
writ petitioners.

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 December 20, 2021, whereby the writ petition of the private respondents herein being WPA 4615 of 2017, was disposed of by a learned Single Judge of this Court.

The writ petitioners approached the learned Judge with the grievance that possession of their land was taken over by the State in two different instalments. Their grievance is regarding the second taking over as they say that they have not received any compensation for such land.

It was admitted on behalf of the State that although funds were sanctioned by the Land and Land Reforms Department and the matter was placed before the requiring

body for making available necessary funds for payment to the writ petitioners, in fact no payment was made.

Learned Counsel for the State suggested before the learned Single Judge that the State shall initiate proceedings for direct purchase of the land in question from the petitioners at the present market value in accordance with a Memorandum no. 756-LP/1(A)-03/14(Pt-II) dated February 25, 2016. Since the writ petitioners were agreeable to such suggestion, the learned Judge disposed of the writ petition with the following directions:-

“... In view of the above, the State respondents are directed to complete the process of direct purchase in terms of the Memorandum No. 756-LP/1(A)-03/14(Pt-II) dated 25th February, 2016 within a period of six months from the date of communication of this order after giving reasonable opportunity of hearing to all the interested parties including the petitioners, in accordance with law...”

Being aggrieved, the State has come up by way of this appeal.

Mr. Galib, learned Advocate appearing for the State, says that the learned Single Judge ought not to have acted on the basis of suggestion made by the learned State Counsel. A suggestion does not amount to a concession or consent. The State Counsel had no instruction from the State to make submission as he did. Submission of a State Advocate excepting learned Advocate General, is not binding on the State without written instructions from the relevant department. Further, the order passed by the

learned Single Judge is contrary to orders passed by several Division Benches of this Court.

Mr. Galib would want us to set aside the order under appeal.

We have also heard Mr. Pan, learned Advocate appearing for the writ petitioners/respondents herein.

We are unable to agree with Mr. Galib that the learned Single Judge ought not to have acted on the basis of suggestion made on behalf of the State. In effect, the State offered to initiate proceedings for direct purchase of the land in question in accordance with the aforesaid memorandum dated February 25, 2016. The writ petitioners accepted such offer before the learned Judge. We see absolutely no error on the part of the learned Judge in directing the State to complete the process of direct purchase in terms of the aforesaid memorandum in the aforesaid factual matrix.

The points urged by Mr. Galib before us, were not argued before the learned Single Judge. Whether or not it is any more permissible to give effect to the memorandum dated February 25, 2016, is a question which was not urged before the learned Single Judge. As we see, there is no apparent infirmity in the order sought to be impugned before us.

Further, we are of the view that the order is in the nature of a consent order against which no appeal will lie. Hence we are not inclined to entertain this appeal.

The appeal being MAT 121 of 2023 and the connected application being IA No: CAN/2/2023 stand disposed of without any order as to costs.

This will not prevent the State from approaching the learned Single Judge with an appropriate application, if it is entitled to do so in law, and urge the points which learned Advocate for the State urged before us today.

The department is directed to accept the *Vakalatnama* of Mr. Subham Ghosh, learned Advocate-on-Record for the writ petitioners.

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

(Arijit Banerjee, J.)

(M.V. Muralidaran, J.)