

19.02.2024
Item No.07
Court No.6.
S. De

M.A.T. 286 of 2024
With
I.A. No. CAN/1/2024
I.A. No. CAN/2/2024
I.A. No. CAN/3/2024
Dibyendu Majhi & Ors.
Vs
Sk. Siddik & Ors.

Mr. S. Sengupta,
Ms. Mayuri Ghosh, ...for the appellants.

Md. Sarwar Jahan,
Sk. Nayeemul Hoque,
...for the respondent no.1.

Mr. Sirsanya Bandhyopadhyay, Ld. Jr. Standing Counsel
Mr. Arka Nag,
Mr. Amrita Panja Moulick, ...for the State.

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

In re : I.A. No. CAN 3 of 2024

The applicants say that they are vitally affected
by the order that they seek to challenge before us. The
order sought to be impugned directs implementation of
an earlier order of this Court which would have the
effect of demolition of a “Manasha Bedi”, which, the
applicants say that they have been worshiping for a
very very long time. They are the residents of the
concerned village. They seek leave to appeal against
the order of the learned Single Judge since they were
not parties to the writ petition.

Having heard learned counsel for the applicants, we are of the view that they may have something to say regarding the impugned order.

Accordingly, leave is granted to the applicants to prefer appeal against the order dated June 22 of 2023.

I.A. No. CAN 3 of 2024 is, accordingly, disposed of.

In re : I.A. No. CAN 2 of 2024

This is an application for condonation of delay of about 497 days in presenting the appeal. Causes shown being sufficient, the delay is condoned.

I.A. No. CAN 2 of 2024 is, accordingly, disposed of.

In re : MAT 286 of 2024 & I.A. No. CAN 1 of 2024

In the year 2014, one Sk. Ayub Ali and others, residents of village Basantapur in the district of Howrah, had approached a learned Judge of this Court by filing W.P. 31226 (W) of 2014 with the grievance that an illegal construction had been made on government land. The learned Single Judge, by a judgment and order dated February 23, 2016, disposed of the writ petition with the following observations and directions :

“In those circumstances, I relegate to entire disputes raised in this writ petition to the District Magistrate. He will

specifically examine the truth of the assertions made by the Block Development Officer in his report dated 4th May, 2015 upon hearing the petitioners and the private respondents and other interested party. The District Magistrate will pass a reasoned order within three months of communication of this order.

If the District Magistrate finds that there is illegal construction, he will take steps through police for demolition of the same in accordance with law.

The District Magistrate shall for the purpose of this case be treated as the prescribed authority under Section 23(2) OF THE West Bengal Panchayat Act, 1973.

The decision of the District Magistrate will be forwarded to the Block Development Officer Amta-I, Howrah, for taking necessary action in accordance with law.”

Pursuant to the aforesaid order, the Additional District Magistrate (General), Howrah, relying on a report dated October 5, 2016 submitted by the

concerned Block Land and Land Reforms Officer,
passed the following order :-

“That the Block Development Officer, Amta-I, Howrah is directed to take necessary action for demolition of the remaining part of the ‘Manasa Bedi’ measuring 51 Sq. ft. situated in L.R. Plot No. 163 within 07 (Seven) days from the date of communication of this order and to keep the matter be informed to the undersigned after execution of the order.

That Inspector-in-Charge, Amta Police Station, Howrah is directed to provide all possible police assistance to the Block Development Officer, Amta-I, Howrah during the process of the demolition work.

That the matter stands disposed of within the purview of the order dated 23.02.2016 of the Hon’ble High Court, Calcutta vide W.P. No. 31226(W) of 2014 under section 23(2) of the West Bengal Panchayat Act, 1973 without giving any costs to any of the parties.”

In the present round of litigation, one Sk. Siddik approached the learned Single Judge by filing WPA 6930 of 2020 for implementation of the order passed

by the Additional District Magistrate (General), Howrah, on October 19, 2016.

The learned Single Judge disposed of the writ application with the following observations and directions :

“After hearing the submissions made on behalf of both the parties and upon perusal of the materials on record, it appears that the District Magistrate has partly complied with the order passed by the Court and has come to a definite finding that there is unauthorised construction but the said authority did not proceed further to demolish the illegal construction as directed in the order dated 23rd February, 2016.

An application for contempt is pending. Accordingly, the instant writ petition is disposed of by directing the District Magistrate, Howrah to take steps in strictly compliance of the direction passed by the Court on 23rd February, 2016.”

Being aggrieved, the appellants have come up before us.

Mr. Sengupta, learned advocate appearing for the appellants says that the concerned construction is a religious one and the appellants, who represent most of the other residents of the village, have deep religious

and sentimental attachment to the same. They were not granted an opportunity of hearing before order for demolition of the same was passed. The order under appeal should be set aside. The order of the Additional District Magistrate is also devoid of sufficient reasons and is not based on adequate material. Some officer in the administration higher up than the Additional District Magistrate should reconsider the matter and take a fresh decision. He also submits that the appellants have not made any new construction at the concerned locale.

Mr. Bandyopadhyay, learned advocate appearing for the State says that efforts have been made to remove the remaining 51 Sq. ft. of the concerned impugned construction but there has been strong public resistance. There would be a serious law and order problem if the demolition order is implemented.

Mr. Jahan, learned advocate appearing for the respondent/writ petitioner, says that the impugned construction encroaches on public path. The same cannot be allowed to stand. He refers to Section 25 of the West Bengal Panchayat Act, 1973. He further submits that when the first writ petition was filed in the year 2014 around the time when the construction was first made, the persons responsible for the construction were made respondents in the writ petition.

Having heard learned counsel for the parties and in the peculiar facts and circumstances of this case, we are of the view that ends of justice will be served if the appellants herein are given an opportunity of hearing by a competent officer in the administration who will also hear the writ petitioner and shall take a fresh decision in the matter of alleged unauthorized construction of a religious structure encroaching on public land.

Accordingly, we direct the Secretary of the Panchayat and Rural Development Department, Government of West Bengal, being the respondent no.2 herein to depute/nominate a competent officer in the administration higher up than the District Magistrate, who will hear the appellants herein and the writ petitioner and shall take a fresh decision in the matter. The name and designation of such officer shall be communicated to learned advocate-on-record for the appellants, namely, Ms. Mayuri Ghosh and learned advocate-on-record for the writ petitioner being Sk. Nayeemul Hoque, within a fortnight from date. Once such communication is made the appellants herein would be at liberty to file a comprehensive representation before the nominated officer with a copy to learned advocate for the writ petitioner within ten days of such communication. The writ petitioner will be entitled to file his response

to such representation within ten days thereafter. The nominated officer will grant an opportunity of hearing to any one of the appellants and the writ petitioner or their authorized representatives and shall take an informed decision in the matter in accordance with law, by passing a reasoned order. The entire exercise will be completed by the nominated officer within ten weeks from the date of communication of this order by the parties to the Secretary of the Panchayat and Rural Development Department, Government of West Bengal. Further action be taken by the State administration depending on what order is passed by the aforesaid officer.

The order of the learned Single Judge impugned herein stands modified to the aforesaid extent.

MAT 286 of 2024 is disposed of along with the application being I.A. No. CAN 1 of 2024.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(M.V. Muralidaran, J.)