

5.
20-03-2024
(Ct. no.06)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**MAT 358 of 2024
+
IA NO:CAN/1/2024
+
CAN/2/2024**

**Balaram Rana & Ors.
Vs.
Sri Sukumar Das & Ors.**

Mr. Bhaskar Chandra Manna
... For the Appellants.

Mr. Bharat Ch. Simai
... For Private Respondents.

Mr. Chandi Charan De, learned AGP,
Ms. Reshmi Rehman
... For the State.

Re : CAN 1 of 2024

This is an application for condonation of delay of 291 days, as per report of the Additional Stamp Reporter, in filing the appeal. Causes shown being sufficient, the delay is condoned.

The application being CAN 1 of 2024 is, thus, allowed.

Re : MAT/358/24 & CAN/2/24

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

A judgment and order dated April 04, 2023, whereby the writ petition of the respondent nos.1 and 2 herein, being WPA 22593 of 2022, was disposed of

by a learned Judge of this Court, is the subject matter of challenge in this appeal at the instance of the private respondents in the writ petition.

The writ petitioners approached the learned Single Judge praying for a writ of mandamus directing the concerned authorities to take steps for removal of unauthorized encroachment from the land of Public Works Department, being plot nos.38 and 318, J. L. No.101, Khatian No.436, Mouza – Saheb Khan Keranibarh. Apparently, the said plots are situate in front of the raiyati land belonging to the writ petitioners.

The learned Judge noted that earlier a writ petition had been filed being WPA 3998 of 2021, which was disposed of by this Court by an order dated September 13, 2021, directing the concerned authority to remove the alleged encroachment on Dag No.38. In compliance with such order, the Sub-Divisional Officer, Contai, passed an order under Section 10(3) of the West Bengal Highways Act, 1964. Such order was carried in appeal under Section 10(4) of the 1964 Act before the District Magistrate, Purba Medinipur.

By an order dated February 22, 2022, the appellate authority upheld the order of the Sub-Divisional Officer and directed the latter to take all necessary measures for removal of all encroachments from the government land.

Having noted the above, the learned Judge concluded that the encroachment on plot no.38 have already been dealt with by the concerned authority.

With regard to the alleged encroachment on plot no.318, the learned Judge allowed the prayer of the writ petitioners, granting liberty to them to make a representation before the concerned authority, being the Assistant Engineer, Contai Highway Sub-Division, with a direction on that authority to consider such representation at the earliest. The learned Judge, accordingly, disposed of the writ petition with the following observations:

“ Upon consideration of the submission made on behalf of the parties, the writ petition is disposed of with liberty to the petitioners to submit a comprehensive representation before the 4th respondent within 15 days from date. The 4th respondent is directed to consider and dispose of the representation within a period of three months from the date of receipt thereof after granting reasonable opportunity of hearing to all the interested persons including the petitioners and the private respondents, in accordance with law. ”

Being aggrieved, the private respondents in the writ petition have come up by way of this appeal.

Mr. Manna, learned advocate, appearing for the appellants, in his usual fairness says that there does not appear to be any error in the order of the learned Single Judge. However, a notice dated February 19, 2024, has been issued by the Assistant Engineer, PWD, Contai Sub-Division, calling upon his clients (the appellants) to vacate the concerned premises by removing their shop rooms therefrom. The appellants have been running such shop rooms for more than 70 years. They will be greatly prejudiced if they are forced to remove the shop rooms.

We may have full sympathy for the appellants, but we are unable to grant any relief to them. There is evidently no infirmity in the order of the learned Single Judge. If the appellants are aggrieved by the action taken by the Competent Authorities under the 1964 Act, pursuant to this Court's order passed in the earlier writ petition, the appellants would be at liberty to challenge the orders of such authorities in accordance with law, if they are entitled to do so. Nothing stops the appellants from assailing the notice dated February 19, 2024, in accordance with law, if law gives them the right to do so.

Since we do not find any error in the judgment and order impugned before us, we dispose of the appeal and the connected application, without any order in favour of the appellants.

Affidavits not having been called for, the allegations in the stay petition, shall be deemed not to have been admitted by the respondents.

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

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(M. V. Muralidaran, J.) (Arijit Banerjee, J.)