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

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

**MAT 548 of 2024
+
IA NO:CAN/1/2024**

**Sahadur Sekh alias Sahajat Sk.
Vs.
Usuf Rahaman & Ors.**

Mr. Sounak Bhattacharya,
Ms. Ipsita Ghosh
... For the Appellant.

Mr. Pratip Kumar Chatterjee
... For the Respondent/
Writ Petitioner.

Mr. Ayan Banerjee,
Mr. Biswajit Das
... For the State.

Mr. Sumitava Chakraborty
... For Respondent No.11.

Affidavit-of-Service filed in Court today is taken
on record.

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

A judgment and order dated February 22, 2024,
whereby the writ petition of the respondent no.1
herein, being WPA 23826 of 2023, was disposed of by
a learned Judge of this Court, is the subject matter of
challenge in this appeal, at the instance of the
respondent no.31 in the writ petition.

The writ petitioner approached the learned
Single Judge complaining of unauthorized

construction raised by the private respondents in the writ petition including the appellant herein, by encroaching on PWD Road adjoining the writ petitioner's plot, thereby obstructing his ingress to and egress from his property.

It was submitted on behalf of the State respondents that pursuant to representations made by the writ petitioner, proceedings under Section 10 of the West Bengal Highways Act, 1964 have been initiated and concluded by an order passed under Section 10(3) of that Act. The Assistant Engineer, PWD, Kandi, by a letter issued on October 10, 2023, requested the Officer-in-Charge, Burwan Police Station, Murshidabad, for assistance for the purpose of removal of the roadside encroachments.

Learned Single Judge noted that a Public Interest Litigation had been filed by the respondent no.41 in the writ petition and by order dated August 21, 2023, the Hon'ble Division Bench observed that the roads and road margins are meant for free movement of the public and the traffic and there cannot be any hindrance to such activities, equally so are the pavements which are meant for pedestrians. The Division Bench left the matter for consideration by the Sub-Divisional Officer, Kandi. Noting as aforesaid, the learned Judge disposed of the writ petition by passing the impugned judgment and order, the operative portion whereof reads as follows:

“ Upon consideration of the submission made on behalf of the parties as well as material on record, this Court is inclined to hold that since proceeding under Section 10 of the West Bengal Highways Act, 1964 has been concluded and the issue awaits removal of the unauthorised construction with the assistance of the police, it is

expected that such assistance shall be rendered by the 9th respondent and the encroachment removed at the earliest, not later than one month from the date of communication of this order. ”

Being aggrieved, the respondent no.31 in the writ petition has come up by way of this appeal.

Mr. Bhattacharya, learned advocate, appearing for the appellant, says that demolition activities have started since this morning. Copy of the order passed by the Sub-Divisional Officer under Section 10(3) of the 1964 Act was never made available to the appellant. The appellant has a statutory right of appeal against such demolition order under Section 10(4) of the 1964 Act. He says that some breathing space should be granted to the appellant so that he can exercise his statutory right of appeal and obtain protective orders from the appellate authority.

We notice that firstly, the order of demolition was passed on August 11, 2023. The appellant would have us believe that he was not aware of that order. We are afraid that we cannot lend any credence to such submission. It appears that notice of hearing was issued to all concerned. Secondly, the order impugned in this appeal was passed on February 22, 2024. The memorandum of appeal was filed only on March 18, 2024, i.e., after a delay of almost a month. If the appellant was really that aggrieved by the order impugned herein, he would not have waited for such a long period. His conduct has not exhibited diligence or alertness to any degree. Today he prays for breathing space. We have no sympathy for indolent litigants. A court of equity, which the Writ Court is, is slow to grant relief to litigants who sleep over their legal rights.

We find no reason to interfere with the order under appeal. The appeal and the connected application fail and are hereby dismissed. This will not prevent the appellant from taking recourse to any other remedy that he may have under the law, if he is entitled to do so.

On the request my by Mr. Bhattacharya, learned advocate for the appellant, we direct the concerned Sub-Divisional Officer to immediately make available a copy of the demolition order passed by him under Section 10(3) of the 1964 Act upon being so requested by the appellant or his learned advocate-on-record.

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.)