

22.04.2024
Item No.13.
Court No.6.
AB

M.A.T. 748 of 2024
With
CAN 1 of 2024
CAN 2 of 2024

Palash Dwari
Vs
The State of West Bengal & Others

Mr. Partha Ghosh,
Mr. Madhu Jana,
Mr. Amal Dutta,
Mr. Rahul Agarwala,
Mr. Debasis Das,
Mr. Golam Zakyfor the Appellant.

Mr. Prosenjit Mukherjee,
Ms. Rajyasri Basu,
Mr. Saptarshi Chakraborty
.....for the Respondents
/Writ Petitioners.

Mr. Susanta Paul,
Mr. Ananda Dulal Sarkar.....for the State.

Affidavit of service filed in Court today, be kept
with the records.

In re : IA CAN 2 of 2024

This is an application for condonation of delay of
240 days in filing the appeal. Causes shown being
sufficient, the delay is condoned.

I A CAN 2 of 2024 is, accordingly, disposed of.

In re : MAT 748 of 2024, IA CAN 1 of 2024

A judgment and order dated June 16, 2023,
whereby a writ petition of the respondent nos.10 to 12
herein, being WPA 9230 of 2023, was disposed of by a
learned Judge of this Court, is assailed in this appeal,
filed at the instance of the respondent no.10 in the
writ petition.

The respondents/writ petitioners approached the learned Single Judge with the grievance that the private respondents in the writ petition had encroached on PWD land and had made unauthorized construction obstructing the ingress to and egress from the property of the writ petitioners. The learned Judge noted the various complaints that had been lodged by the writ petitioners. The learned Judge disposed of the writ petition with the following observations and directions:

“Learned counsel for the petitioners submits that no further step has been taken by the concerned authority till date. Learned counsel seeks a direction upon the 3rd respondent to initiate proceeding under Section 10 of the West Bengal Highways Act, 1964, if necessary, and conclude the said proceeding within a stipulated time frame.

It is submitted on behalf of the private respondents that the private respondents may be given an opportunity of hearing by the concerned authority at the relevant time.

Learned counsel for the State respondents submits that the 3rd respondent be directed to take necessary steps in accordance with law.

In view of the above, this Court is inclined to hold that in the event encroachment upon PWD land or any portion thereof is found upon demarcation, the 3rd respondent is directed to initiate proceeding under Section 10 of the West Bengal Highways Act, 1964 and take the proceeding to its logical conclusion within three months from the date of communication of this order upon affording reasonable opportunity of hearing to all the interested persons including the petitioners and the private respondents, in accordance with law.”

Being aggrieved, the respondent no.10 in the writ petition has come up by way of this appeal.

We are not inclined to interfere with the order under appeal for various reasons. Firstly, it appears from the order under appeal that submission was made on behalf of the appellant herein before the learned Judge that an opportunity of hearing may be given to him by the concerned Authority at the relevant time. In other words, there was a tacit consent on his part to the learned Judge passing the said order. Secondly, we are told that pursuant to the order of the learned Single Judge, proceedings were initiated under Section 10 of the West Bengal Highways Act, 1964. The appellant herein participated in such proceedings. An order has been passed to the effect that he is an encroacher. He has preferred a statutory appeal before the District Magistrate, Hooghly. Therefore, the order under appeal has worked itself out. Effect has been given to the impugned order. There can be no further reason to interfere with the order.

Learned Advocate for the appellant says that a contempt application being CPAN 1638 of 2023 has been filed by the writ petitioners before the learned Single Judge complaining of wilful violation of Her Ladyship's order by the concerned Officers in the State Administration. Learned Advocate points out that although the learned Judge was apprised that an appeal has been preferred against the order passed under Section 10(3) of the West Bengal Highways Act,

1964, before the District Magistrate, by the private respondents in the writ petition, the learned Judge has called for an affidavit of compliance from the alleged contemnor. If the order passed under Section 10(3) of the 1964 Act is implemented, the statutory appeal of the present appellant under Section 10(4) of the 1964 Act would become infructuous.

We are told that the learned Judge is likely to take up the contempt application again any time after May 6, 2024. We, therefore, direct the District Magistrate, Hooghly, to dispose of the present appellant's statutory appeal, in accordance with law, observing the principles of natural justice, by May 4, 2024.

Since the statutory appeal of the appellant is pending and we have directed the concerned District Magistrate to dispose of the appeal by May 4, 2024, we are sure that the State shall not take steps for implementation of the order, which is under challenge before the District Magistrate till the disposal of the statutory appeal.

The appeal and the connected application stand disposed of.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Prasenjit Biswas, J.)