

D/L
Item Nos.
13 & 14
29.04.2024
KOLE

**MAT 758 of 2024
With
IA CAN 1 of 2024
With
IA CAN 2 of 2024
With
IA CAN 3 of 2024**

**Sujata Nandy
-Vs.-
Chanchala Roy & Ors.**

WITH

**MAT 759 of 2024
With
IA CAN 1 of 2024
With
IA CAN 2 of 2024
With
IA CAN 3 of 2024**

*Mr. Sounak Bhattacharya,
Mr. Sumitava Chakraborty,
Mr. Sounak Mondal,*

...for the appellant.

*Mr. Lalit Mohal Mahata, Ld. AGP,
Mr. Prasanta Behari Mahata,*

...for the State in MAT 758 of 2024.

*Mr. Maloy Singh,
Mrs. Neelam Singh,*

...for the State in MAT 759 of 2024.

*Mr. Shahan Shah,
Mr. Soumen Barman,*

...for the respondent nos. 12, 13 and 14.

**In Re: CAN 1 of 2024 in MAT 758 of 2024 and CAN 1
of 2024 in MAT 759 of 2024:**

These two applications have been filed for leave to prefer appeals against the orders dated November 5, 2019 and February 27, 2024, whereby WP No. 15400 (W) of 2019 and WPA 16340 of 2023 respectively were disposed of by a learned Judge of this Court. The applicant was not party to

either of those writ petitions. However, she says that she is vitally affected by the aforesaid two orders and hence seeks leave to prefer appeals against the said two orders.

Having heard Mr. Bhattacharya, learned Advocate for the applicant, we are of the view that the applicant may have something to say in the matter as she claims to be a co-sharer of the premises in question which is said to be unauthorized.

Accordingly, leave is granted to the applicant to prefer appeals against the orders dated November 5, 2019 and February 27, 2024.

CAN 1 of 2024 in MAT 758 of 2024 and CAN 1 of 2024 in MAT 759 of 2024 are, accordingly, disposed of.

In Re: CAN 2 of 2024 in MAT 758 of 2024 and CAN 2 of 2024 in MAT 759 of 2024:

These are applications for condonation of delay in presenting appeals against the orders dated November 5, 2019 and February 27, 2024. Although the delay in respect of the order dated November 5, 2019 is substantial, causes shown being sufficient, and considering the fact that the applicant was not a party to the two writ petitions, the delay is condoned.

CAN 2 of 2024 in MAT 758 of 2024 and CAN 2 of 2024 in MAT 759 of 2024 are, accordingly, disposed of.

In Re: CAN 3 of 2024 in MAT 758 of 2024 and CAN 3 of 2024 in MAT 759 of 2024:

These two appeals have been taken up together for hearing and disposal, since the same involve the same set of facts.

It appears that one Chanchala Roy approached a learned Judge of this Court by filing WP No. 15400 (W) of 2019 with the grievance that the private respondents in that writ petition have made unauthorized construction, but the concerned Gram Panchayat was not considering the representation made by her. The learned Single Judge disposed of the writ petition by the order dated November 5, 2019, with the following directions:-

“Considering the submissions advanced by the learned Advocate appearing for the parties and after perusing the records, I direct the respondent No. 3, the Prodhan, Kechakur Gram Panchayat to consider and take a decision in accordance with law in respect of the petitioners representation dated 18.4.2019 within six weeks from the date of communications of this order after giving an opportunity of hearing to the petitioner or his authorized representative and the private respondent Nos. 9 to 13 or their authorized representative and thereafter communicate the decision to the parties within one week.

Needless to mention, if it is found in the hearing that the private respondent Nos. 9 to 13 have been carrying on unauthorized construction without obtaining any sanction plan and also illegally filling up pond thereby obstructing the petitioner’s ingress and egress from his house to the public road. Then the respondent No. 3 is directed to take steps in accordance with law for demolition of such unauthorized construction within six weeks.”

It appears that the Panchayat considered Chanchala’s representation and referred the matter to the concerned Sub-divisional Officer before whom the matter is presently pending.

Chanchala once again approached a learned Judge of this Court by filing WPA 16340 of 2023 seeking a direction

on the concerned Sub-divisional Officer to conclude the proceedings pending before him being Misc. Case No. 09/Misc/SDO/DH of 2022-23. It was submitted before the learned Single Judge that hearing had been conducted on various dates but final order has not been passed. The learned Judge noted that the Sub-divisional Officer, Diamond Harbour has forwarded an instruction to the learned Advocate showing that the concerned BL & LRO has been asked to demarcate the suit land. Such demarcation report from the BL & LRO has not yet been received.

The learned Judge came to the conclusion that the Sub-divisional Officer is prevented from concluding the proceedings because of the absence of the report from the BL & LRO. Accordingly, the learned Judge disposed of the writ petition by the order dated February 27, 2024, with the following directions:-

“In view of the above, the B.L.&L.R.O., Mandirbazar Block is directed to prepare the report as sought for by the Sub Divisional Officer and to forward the same to the Sub Divisional Officer for conclusion of the aforesaid proceeding.

Steps shall be taken at the earliest but positively within 12 weeks from the date of communication of this order.

The learned advocates representing the parties are directed to cooperate for the purpose of conclusion of the proceeding which is pending for pretty long time.

Learned advocate for the petitioner shall communicate this order to the Sub Divisional Officer and the B.L.&L.R.O.”

The appellant in both the appeals says that she is a stakeholder in the premises in question. She should be

granted an opportunity of being heard before any coercive measure is taken against the construction in question.

From the affidavit of service filed in Court today it appears that the learned Advocate, who represented Chanchala before the learned Single Judge, has been served. However, nobody appears on behalf of Chanchala. The concerned Gram Panchayat is also not represented in spite of service.

We grant liberty to the appellant to approach the concerned Sub-divisional Officer and participate in the proceedings pending before him being Misc. Case No. 09/Misc/SDO/DH of 2022-23. The Sub-divisional Officer shall grant full opportunity of hearing to the appellant and shall consider all documents that the appellant may place before him.

No steps for demolition of the impugned structure or any portion thereof shall be taken without first granting an opportunity of hearing to the appellant herein. We pass this order keeping in mind the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973 which was incorporated in the statute book by the West Bengal (Amendment) Act, 2017 with effect from November 9, 2017.

The appeals and the connected applications are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Prasenjit Biswas, J.)

(Arijit Banerjee, J.)