

24.12.2024  
Item No.04  
Court No.11  
Avijit Mitra

**MAT 1397 of 2024  
with  
IA No.CAN 1 of 2024  
with  
IA No.CAN 2 of 2024  
with  
IA No.CAN 3 of 2024  
with  
IA No.CAN 4 of 2024**

**Ashoke Jana  
- Versus -  
Pulin Maity & ors.**

Mr. Tarun Kumar Das,  
Mr. Sujit Bhunia,  
Mr. Gourab Ghosh

...for the appellant

Mr. Salil Kumar Maiti,  
Ms. Pinki Saha,  
Ms. Dolan Samanta

...for the private respondent

Affidavit-of-service, as filed by the appellant be kept on record.

The present appeal has been preferred challenging an order dated 21<sup>st</sup> December, 2023 passed in the writ petition being WPA 19991 of 2022. By the said order, the learned Single Judge disposed of the writ petition directing the third respondent in the writ petition to consider and dispose of the representation dated 4<sup>th</sup> July, 2022 submitted by the writ petitioner within three months upon affording reasonable opportunity of hearing to all interested persons including the

writ petitioner and the private respondent/ his authorized representative, in accordance with law.

In connection with the present appeal, the appellant being the respondent no.8 in the writ petition has preferred an application for condonation of delay being IA No.CAN 1 of 2024. As we have invited Mr. Das, learned advocate appearing for the appellant to advance his arguments on merits of the appeal, we condone the delay in preferring the appeal and dispose of the application being IA No.CAN 1 of 2024.

Mr. Das further submits that during pendency of the writ petition, the writ petitioner, namely, Pulin Maity expired and his successors, being his two sons were substituted. However, as cause title of the writ petition was not amended, the appellant could not file the memorandum of appeal incorporating the names of the sons of Pulin Maity.

Accordingly, the application being IA No.CAN 3 of 2024 has been filed in connection with the present appeal praying for expunction of the name of Pulin Maity and for incorporation of names of his sons namely, Swapan Maity and Tapan Maity.

Such prayer is considered and allowed.

The learned advocate-on-record of the appellant is granted leave to make necessary correction in the cause title of the memorandum of appeal.

The application being IA No.CAN 3 of 2024 is, accordingly, disposed of.

In connection with the appeal, two further applications being IA No.CAN 2 of 2024 and IA No.CAN 4 of 2024 have been preferred seeking appropriate orders.

Mr. Das submits that the Sub-Divisional Officer & Sub-Divisional Magistrate, Haldia had no jurisdiction to consider the representation submitted by the writ petitioner under the provisions of the Public Land (Eviction of Unauthorised Occupants) Act, 1962 (hereinafter referred to the 1962 Act).

He argues that the appellant is the absolute owner of 8 decimals of land, as would be explicit from the gift deed executed in his favour and the record of rights of the subject land. In view thereof, the provisions of the 1962 Act could not have been applied to the facts of the case. Such arguments, as advanced, in course of hearing of the writ petition were glossed over by the learned Single Judge and no finding was returned on the same. Such infirmities warrant interference of this Court.

Drawing our attention to a memo dated 20<sup>th</sup> September, 2024 annexed at page 90 of IA No.CAN 2 of 2024 and a memo dated 19<sup>th</sup> December, 2024, annexed at page 11 of IA No.CAN 4 of 2024, Mr. Das submits that though the Haldia Municipality had no jurisdiction to issue the said memoranda. In the memo dated 19<sup>th</sup> December, 2024 it has been stated *inter alia* that '*Haldia Municipality has fixed a date on 30.12.2024 at 1.30 p.m. for removing the unauthorized encroachment from the land in question*'. In the

said conspectus, unless an *interim* protection is granted, the appellant will suffer irreparable loss and injury.

Mr. Maiti, learned advocate appearing for the private respondents, namely, Swapan Maity and Tapan Maity, the heirs of the writ petitioner, submits that the order impugned in the present appeal has already been implemented. Pursuant to the direction of the learned Single Judge the Sub-Divisional Magistrate & Sub-Divisional Magistrate, Haldia had already considered the writ petitioner's representation and passed a reasoned order on 14<sup>th</sup> March, 2024.

Drawing our attention to the said order, Mr. Maiti submits that the appellant participated in the hearing and admitted that his grand-father from whom the land in question was taken got compensation. He further stated that within six months he would remove the encroachment from the subject land. In the said conspectus, no interference is called for in the present appeal.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, the order impugned in the present appeal has been implemented and the jurisdictional Sub-Divisional Magistrate & Sub-Divisional Magistrate, Haldia passed an order dated 14<sup>th</sup> March, 2024. No statutory appeal has been preferred against the order. Pursuant the order dated 14<sup>th</sup> March, 2024, the Chief Executive Officer, Haldia Municipality had issued the memoranda dated 20<sup>th</sup>

September, 2024 and 19<sup>th</sup> December, 2024. No jurisdictional issue was also urged on behalf of the appellant before the learned Single Judge.

In view thereof, no interference is called for in the present appeal.

Accordingly, the appeal and the connected applications being IA No.CAN 2 of 2024 and IA No.CAN 4 of 2024 are dismissed.

It is however made clear that the dismissal of the appeal shall not prevent the appellant from challenging the order dated 14<sup>th</sup> March, 2024 passed by the Sub-Divisional Officer & Sub-Divisional Magistrate, Haldia and the memoranda 20<sup>th</sup> September, 2024 and 19<sup>th</sup> December, 2024 issued by the Chief Executive Officer, Haldia Municipality before the appropriate forum, if so advised and in accordance with law.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

**(Subhendu Samanta, J.) (Tapabrata Chakraborty, J.)**