

21.03.2024
Item No.04.
Court No.6.
AB

M.A.T. 1522 of 2023
With
CAN 1 of 2023
CAN 2 of 2024

Gobinda Chandra Rudra
Vs
The State of West Bengal & Others

Mr. Syamal Kr. Das,
Mr. Prasanta Kr. Banerjee,
Ms. Krishna Yadavfor the Appellant.

Mr. Achintya Kr. Banerjee,
Ms. Indumouli Banerjee
.....for the Ranaghat Municipality.

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
90 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 1522 of 2023, CAN 1 of 2023

A judgment and order dated April 11, 2023,
whereby the appellant's writ petition, being WPA
16998 of 2014, was dismissed by a learned Judge of
this Court, is the subject matter of challenge in this
appeal filed by the writ petitioner.

The added respondents are the legal heirs of the
original respondent no.6 whose name was
Shyamapada Karmakar. The writ petitioner
approached the learned Single Judge with the

grievance that his complaint to the Ranaghat Municipality to the effect that the private respondent had made unauthorized construction on a common passage, was not receiving the attention of the competent Authority.

It was further submitted on behalf of the writ petitioner that in a suit filed by him against the private respondent in the Court of learned Civil Judge (Junior Division), First Court, Ranaghat, District – Nadia, on an application filed under Order 39 Rule 1 and 2 of the Code of Civil Procedure read with Section 151 thereof, the writ petitioner has obtained an order of temporary injunction.

On behalf of the Municipality, Mr. Achinta Kumar Banerjee, learned Advocate drew the attention of the learned Judge to a copy of an enquiry report dated June 20, 2014, submitted by the Sub Assistant Engineer, Ranaghat Municipality from which it appeared that the allegation of encroachment on common passage by the private respondent was not correct.

It further appeared that the Municipal Authorities have sanctioned a building plan (commercial) bearing no.474/28/1/13 in favour of the private respondent. It was further submitted on behalf of the Municipality that a Writ Court should not go into the question of title dispute between the parties.

Noting the arguments of the parties, the learned Judge dismissed the writ petition with the following observations:

“On perusal of the entire materials as placed before this Court and after giving due hearing to the learned Advocates for the parties, it appears to this Court that sufficient materials have been placed before this Court on the part of the respondents/municipal authorities that no encroachment took place on any portion of the common passage at the instance of the private respondent No.6 as alleged by the writ petitioner in its writ petition. As rightly submitted by Mr. Achintya Kumar Banerjee, that this Court being a writ court cannot decide as to whether the said passage is at all common or not and in considered view of this Court the same falls in the domain of territorial competent civil court and the same is to be decided on trial on evidence.

In view of the discussion made herein above, this Court finds no merit at all in the instant petition to allow the prayer of the writ petitioner for issuance of writ of mandamus as prayed for.”

Being aggrieved, the writ petitioner has come up by way of this appeal.

From the affidavit of service filed in Court, we find that the added respondents have been served. However, nobody appears for the added respondents.

We do not find any infirmity in the approach of the learned Single Judge. However, we are of the opinion that if a complaint of illegal construction is made to the Municipality, the complainant should ordinarily be granted an audience by the Municipality. Mr. Achinta Kumar Banerjee, learned Advocate representing the Municipality points out that the complaint was lodged by the writ petitioner on June 6,

2014. The writ petition praying for a Mandamus on the Municipality was filed on June 12, 2014. This did not give sufficient time to the Municipality to take any action on the basis of the complaint or give an opportunity of hearing to the writ petitioner. Only a local enquiry was caused and a report was submitted by the Sub Assistant Engineer as has been recorded by the learned Single Judge.

Mr. Banerjee may be having a point. However, since we are extremely averse to any kind of illegal construction, we grant liberty to the appellant/writ petitioner to make a fresh comprehensive representation to the Board of Councillors of Ranaghat Municipality regarding alleged illegal construction at the instance of the predecessor in interest of the added respondents, with sufficient particulars, within a fortnight from date. If such representation is made within the time period indicated, the Board of Councillors of the Municipality shall dispose of the same by a reasoned order, in accordance with law and the applicable Rules and Regulations, within a period of 12 weeks from the date of receipt of the representation, after affording an opportunity of hearing to the appellant, the private respondents or their authorized representatives. Further action may be taken by the Municipality depending on the order that the Board of Councillors passes.

We have not gone into the merits of the matter. It will be upto the Board of Councillors of the Municipality to take an informed decision in accordance with law if a fresh representation is made by the appellant within the prescribed time period.

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.)

(M. V. Muralidaran, J.)