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08.04.2024
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W.P.A. 20406 of 2023
(Biswanath Tanti & Anr. vs. State of West Bengal & Ors.)

Mr. Gouranga Kr Das

Ms. Poulami Dutta

.... For the Petitioners

Mr. Chandi Charan De

Mrs. Reshma Chatterjee

.... For the State

Affidavit of service filed by the petitioners is taken on record.

None appears for the National Highways Authority of India and the private respondents despite service.

Heard learned counsels for the parties.

It is contended on behalf of the petitioners that in an earlier writ petition being WPA 2249 of 2021 wherein the petitioners were not impleaded as a party, a co-ordinate Bench of this Court, by an order passed on 30th November, 2021, directed the Diamond Harbour National Highway Sub-Division to cause an enquiry into the construction made by the private respondents therein and in the event construction made by the private respondents was found to be on the land belonging to the Authority, urgent steps were directed to be taken for demolition of such construction and resumption of possession by the authority.

Pursuant to the said order, the Executive Engineer, National Highway Division-I by an order passed on 29th March, 2023, recorded that upon perusal of the demarcation of land made by the

Block Land and Land Reforms Officer, Kulpi it appeared that the private respondents including the present petitioners occupied a portion of national highways land by way of encroachment. The name of these petitioners were included in the said order despite the fact that the petitioners were not a party to the writ petition in compliance with which the order was passed.

The petitioners preferred an appeal against the said order before the District Magistrate, South 24 Parganas. By a letter issued on 12th April, 2023, the District Magistrate returned the appeal to the petitioners since the said authority is not the appellate authority under the Control of National Highways (Land and Traffic) Act, 2002.

Immediately thereafter, the petitioners wrote to the District Magistrate and the Executive Engineer, National Highway Division-I requesting them to provide address/authority of the National Highways Tribunal situated in Kolkata in order to enable them to prefer the appeal before the said authority.

In the meantime, the Executive Engineer, National Highway Division-I has issued a letter to the Superintendent of Police, Sunderbans Police District, Kakdwip, 24 Parganas, South on 10th August, 2023 requesting police assistance for removal of the encroachment in terms of the order of this Court.

The petitioners seek to prefer an appeal against the order passed by the Executive Engineer, National Highway Division-I on 29th March, 2023 and pray for stay of the order as well as the letter issued on 10th August, 2023 till disposal of the appeal.

It is submitted on behalf of the respondents that they are not aware regarding the appropriate authority who can deal with the appeal intended to be preferred by the petitioners.

In view of the above, this Court is inclined to hold that the petitioners be granted liberty to prefer statutory appeal against the order dated 29th March, 2023 within a stipulated time frame, in the interest of justice.

The writ petition is accordingly disposed of with liberty to the petitioners to prefer an appeal before the appropriate forum against the order dated 29th March, 2023 passed by the Executive Engineer, National Highway Division-I, in accordance with law.

In the event the petitioners prefer the statutory appeal within 15 days from date, the appellate authority shall deal with the appeal on merits without dismissing the same on the ground of limitation. It is expected that the appellate authority shall dispose of the appeal within three months from the date of filing thereof upon affording reasonable opportunity of hearing to the parties therein, in accordance with law.

It is made clear that this Court has not gone into the merits of the case and the appellate forum shall be at liberty to deal with the appeal on merits independently and without being influenced by any observation that may have been made in this order.

The order dated 29th March, 2023 and the letter issued on 10th August, 2023 insofar as the petitioners are concerned be stayed till the appeal is taken up for hearing.

In the event the petitioners fail to prefer the appeal within a period of 15 days from date, the order of stay shall stand automatically vacated.

With the above observations and directions the writ petition being WPA 20406 of 2023 is disposed of.

However, there shall be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)