

D/L
Item Nos.
11 & 12
16.01.2024
KOLE

**MAT 2143 of 2023
With
IA CAN 1 of 2023
With
IA CAN 2 of 2023**

Pankaj Kumar Majumder & Ors.

-Vs.-

Tapan Kumar Som & Ors.

with

**MAT 2408 of 2023
With
IA CAN 1 of 2023**

**The Board of Councilors of Berhampore
Municipality & Anr.**

-vs.-

The State of West Bengal & Ors.

*Mr. Srijib Chakraborty,
Md. . Israil,
Mr. A. Tiwari,*

...for the appellants in MAT 2143 of 2023.

*Mr. Atanu Banerjee,
Ms. Rumeli Sarkar,*

*...for the Municipality in MAT 2143 of 2023
and for the appellant in MAT 2408 of 2024.*

*Mr. Achintya Banerjee,
Mr. A. Kumar Shaw,
Mr. T. Kr. Chatterjee,
Mr. S. Chatterjee,
Mr. M. Ganguly,*

...for the respondent no. 1 in MAT 2143 of 2023.

*Mr. Asish Kumar Guha,
Mr. Anirban Dutta,*

...for the State.

In Re: IA CAN 2 of 2023:-

This is an application for leave to prefer appeal against a judgment and order dated October 13, 2023, whereby the writ petition of the respondent no. 1 herein, being WPA 11320 of 2023 was disposed of. The intending

appellants were not parties to the writ petition. However, the order sought to be impugned records the presence of the intending appellants' Advocate.

The applicants herein had filed a Public Interest Litigation (in short 'PIL') which was registered as WPA (P) 325 of 2021 alleging that the respondent no.1/writ petitioner herein was illegally filling up a water body. An order was recorded in that PIL on December 13, 2021, which noticed that permission of conversion was granted in terms of Section 4(c) of the West Bengal Land Reforms Act, 1955, to the writ petitioner herein, subject to he creating a larger compensatory water body. The submission made on behalf of the present writ petitioner was also recorded that he has already created the compensatory water body of a larger size. No *interim* order was passed by the Coordinate Bench presided over by the Hon'ble the Chief Justice.

The said PIL again came up for hearing on August 8, 2023. The writ application was disposed of by the following order:-

"1. By this public interest writ petition the petitioners sought for a direction upon the respondent authorities for restoration of the water body.

2. The municipal authority has taken action under the relevant enactment and the water body has been restored.

3. The learned advocate appearing for the private respondent submitted that with due permission from the authorities the water body has been filled up and the question of restoration will not arise.

4. It is pointed out by the learned advocate for the municipality that the private respondent has challenged the order

passed under Section 17A by filing a separate writ petition.

5. Hence, while disposing of this writ petition we grant liberty to the private respondent to work out his remedy in the writ petition already filed by him.

6. With the above observations, the writ petition is disposed of.”

The order sought to be impugned in this appeal was passed in the writ petition that was noticed in the order dated August 8, 2023. The present applicants say that the PIL was at their instance. The order passed by the Municipality under Section 17A of the West Bengal Inland Fisheries Act, 1984, was also passed on the complaint of these applicants. Hence, the applicants herein ought to have been impleaded as parties in the writ petition.

We think that the applicants have a point. Accordingly, we allow this application and grant leave to the applicants to prefer appeal against the judgment and order dated October 13, 2023, whereby WPA 11320 of 2023 was disposed of.

IA No. CAN 2 of 2023 is, thus, disposed of.

**IN RE: MAT 2143 of 2023 with CAN 1 of 2023 and
MAT 2408 of 2023 with CAN 1 of 2023:-**

By consent of the parties, both the appeals and the connected applications are taken up for hearing together.

MAT 2143 of 2023 is an appeal preferred by one Pankaj Kumar Majumder and others (hereinafter referred to as “Pankaj”) and MAT 2408 of 2023 is an appeal preferred by the Board of Councilors of Berhampore Municipality (in

short 'the Municipality'). Both the appeals are directed against the judgment and order dated October 13, 2023, whereby the writ petition of the respondent no. 1 in MAT 2143 of 2023 was disposed of.

The respondent no. 1 challenged an order issued by the Municipality under Section 17A of the West Bengal Inland Fisheries Act, 1984 and the action on the part of the Municipality in breaking open the padlock of the landed property of the respondent no. 1 herein, which was initially recorded as water body but subsequently was converted to 'Viti'. The respondent no. 1/writ petitioner submitted before the learned Single Judge that conversion of the water body to 'Viti' had been made in accordance with the provisions of law and upon permission being granted by the District Land and Land Reforms Officer, Murshidabad. Learned Advocate for the State corroborated the stand of the writ petitioner. It was stated that permission had indeed been granted to the writ petitioner to fill up the water body. The writ petitioner has created a compensatory water body. Conversion certificate was duly issued in his favour. All formalities at the end of the DL & LRO have been complied with by the writ petitioner. Necessary deposits have also been made by the writ petitioner with the DL & LRO.

The learned Judge noted that the permission granting conversion is under challenge before the West Bengal Land and Land Reforms Tribunal at the instance of the appellants in MAT 2143 of 2023, by way of O.A. 3215 of 2022. The

learned Judge disposed of the writ petition with the following observations and directions:-

“In view of the above, the act of the Municipality in breaking open the pad lock to enter into the petitioner’s property cannot be supported.

The petitioner is directed to forward all documents in support of the conversion and creating of compensatory water body to the Municipality immediately. The Municipality is directed to peruse the same and make necessary correction in the municipal records. The Municipality is directed to open the padlock and deliver possession to the petitioner latest by 17th October, 2023.

The Municipality is restrained from interfering with the peaceful possession of the plot in question till any contrary order is obtained from the competent Court.

The Court is of the opinion that the presence of the intervenors is not required to adjudicate the instant proceeding. The intervenors will be at liberty to take steps in accordance with law before the Tribunal where the appeal is pending.”

Being aggrieved, both Pankaj and the Municipality have come up by way of separate appeals against the same judgment and order. We have heard learned Counsel for the parties at length.

The importance of preserving water bodies particularly from the environmental perspective cannot be over-emphasized. However, the law of the land as it stands now, empowers the competent authority to permit conversion of a water body into Bastu. It appears that in the present case, the competent authority under the West Bengal Land Reforms Act, 1955, permitted the present writ

petitioner to convert his land from water body to 'Viti' on certain conditions. It appears that such conditions have been fulfilled by the writ petitioner. This is of course disputed by Pankaj whose original application challenging the conversion order is pending before the Land Tribunal.

Today, there is an order of the competent authority permitting conversion of the land in question. The order may be good, may be bad, may be indifferent. The order is under challenge before a competent forum being the Land Tribunal. The appellants in MAT 2143 of 2023 are the applicants in that proceeding and have the carriage of proceedings there. The apprehension of Pankaj is that pending disposal of the original application by the Tribunal, if the order of the learned Single Judge impugned in these appeals is given effect to and the land in question is handed back to the writ petitioner herein, he may again fill up the water body which will create a lot of inconvenience to the residents of the locality in the vicinity of the water body apart from having adverse ecological impact. The writ petitioner of course says that it is a private land surrounded by boundary walls and the members of the public at large have no access thereto. This is disputed on behalf of Pankaj.

We do not find the apprehension of Pankaj to be totally baseless. However, if Pankaj succeeds before the Land Tribunal, and in the meantime the water body is filled up by the writ petitioner or his men and associates, the Tribunal would have ample power to order restoration of the original nature and character of the water body and we direct

the Tribunal to do so in the event the Tribunal cancels the conversion order. We further request the Tribunal to dispose of the original application within four months from the date of a copy of the order being placed before the Tribunal.

Pankaj is praying for an *interim* order of maintenance of *status quo* of the property in question till the Tribunal disposes of Pankaj's application. Since we are not inclined to enter into the merits of the matter, we do not pass any such order. However, if Pankaj makes any such prayer for *interim* order before the Tribunal, such prayer should be considered and decided within four weeks from the date of filing such application for *interim* order, naturally after granting due opportunity of hearing to all concerned parties.

The parties will be at liberty to disclose whatever documents they wish to rely upon before the Tribunal. As regards the appeal of the Municipality, the same also stands disposed of since we are not inclined to interfere with the order of the learned Single Judge.

We make it clear that we have not touched the merits of the disputes between the parties. The Tribunal is requested to decide the original application as also the prayer for *interim* order, if made, without being influenced by any observation either in this order or in the order of the learned Single Judge which is impugned before us.

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

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.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)