

06.05.2024
Item No.08
Court No.6.
S. De

F.M.A. 258 of 2024
With
I.A. No.CAN/1/2023

Tapan Sil.
Vs
The State of West Bengal & Ors.

Mr. Anupam Kr. Bhattacharyya,
Mr. Mritunjay Saha,
Mr. Sd.R. Rafaz,
...for the appellant.

Mr. Malay Krishna De,
...for the State.

Affidavit-of-service filed in Court today, be kept
with the records.

In re : I.A. No. CAN/1/2023

This is an application for condonation of delay of
37 days in filing the appeal. Causes shown being
sufficient, the delay is condoned.

I.A. No. CAN/1/2023 is, accordingly, disposed
of.

In re : F.M.A. 258 of 2024

Although, all the respondents may not have
been served, we are not inclined to defer hearing of
this matter in view of the nature of the order that we
proposed to pass.

This appeal is directed against a judgment and
order dated October 16, 2023, passed by a learned
Judge of this Court in WPA 14066 of 2018, being a
writ petition filed by the appellant herein. The learned

Single Judge has refused to interfere in view of the availability of an alternative statutory remedy.

The appellant approached the learned Single Judge with the grievance that the construction raised by the private respondents is not in consonance with the building plan sanctioned by Baranagar Municipality. Necessary side space has not been kept open. The Municipality wrongfully decided to regularize the construction raised by the private respondents at the meeting of the Board of Councillors held on June 11, 2018. The appellant prayed for setting aside of the order of the Board of Councillors.

The attention of the learned Single Judge was drawn to Section 218(3) of the West Bengal Municipal Act 1993 which provides that an appeal against an order made by the Board of Councillors shall lie to the Court having jurisdiction. Noting such provision, the learned Judge disposed of the writ petition with the following observations :

*“In consideration of the existence
an alternative efficacious speedy
remedy available as contemplated
under Section 218(3) the present writ
petition is not entertained.*

*Accordingly, leave is granted to
the petitioner to prefer an appeal*

under Section 218(3) before the Appellate Authority.

If such appeal is preferred within six weeks from date in that event the Appellate Authority shall decide the appeal on merit and point of limitation shall not to be a relevant consideration.”

Being aggrieved, the writ petitioner is before us by way of this appeal.

We do not find any infirmity in the order under appeal. The learned Judge has rightly refused to exercise high prerogative writ jurisdiction in view of an efficacious alternative remedy being available to the appellant/writ petitioner. The learned Judge has not decided anything on merits and rightly so. The learned Judge has granted liberty to the appellant/writ petitioner to approach the appellate forum as contemplated under Section 218(3) of the 1993 Act. We clarify that it will be open to the appellant herein to argue all points as may be available to him in law, before the appellate forum in the event he decides to challenge the order of the Board of Councillors in accordance with the provision of Section 218(3) of the 1993 Act.

FMA 258 of 2024 is disposed of.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Prasenjit Biswas, J.)