

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

MAT No. 868 of 2024
+
CAN 2 of 2024

The State of West Bengal and others
-vs-
Anil Kumar Barman

For the appellant : Mr. Mrinal Kanti Ghosh,
Mr. Amritlal Chatterjee.

For the respondent : Mr. Jayanta Kumar Das,
Ms. Madhumanti Das.

Heard on : September 2, 2025.

Judgment on : September 2, 2025.

Sabyasachi Bhattacharyya, J.:

1. The scope of the present appeal is limited and as such, the appeal itself along with the application are being taken up for hearing.
2. The present respondent, as the writ petitioner, approached the learned Single Judge, seeking a direction for execution of the necessary deeds and the construction work for the purpose of

building certain projects beneficial to the public at large on the property of the writ petitioner/present respondent.

3. The writ petitioner/ present respondent took an altruistic stand by offering up the said three plots-in-question for the purpose of user for public benefit. However, the present appellants, that is the State authorities, having taken no steps thereon, the writ petitioner/present respondent was allegedly constrained to approach the writ court.
4. The learned Single Judge, by the impugned order, directed execution of the necessary deeds and the project to be constructed in terms of the offer by the writ petitioner/ present respondent.
5. However, learned counsel for the appellants contends, by placing reliance on annexures to the stay application, bearing CAN 2 of 2024, that out of the three plots offered by the present respondent, in respect of one plot, the records of rights indicate that there is presence of *bargadars*, without obliterating whose rights the project cannot be undertaken. In respect of the second out of the three plots, it has been found from the records of rights that there are other co-sharers of the writ petitioner, whose rights

would be adversely affected in the event the unilateral offer of the writ petitioner/present respondent is to be accepted.

6. Regarding the third plot-in-question, although the writ petitioner/respondent's name has been recorded as owner, a part of the property has been found on physical inspection to be a water body, the conversion of which cannot be done unless there is a formal order / application for the same; also such conversion may be opposed to public policy.
7. As such, the present appeal has been preferred.
8. Learned counsel for the writ petitioner/respondent controverts the allegations made by the appellants and submits that there is no impediment at all in taking over the land by the State and construction of a public utility project thereon.
9. It is submitted that the offer was given long back and after having been approved at various levels of the State authorities, the State is now resiling, for some unknown reasons, to give effect to the same.
10. Upon perusal of the impugned order, we find that the State was very much represented before the learned Single Judge and did not take any objection at that juncture to the order. Hence, the appeal is not maintainable as such.

11. Also, in principle, we do not find any illegality in the order of the learned Single Judge in directing the State authorities to execute the appropriate deeds undertake a public project on the lands offered by the writ petitioner/respondent.
12. However, as a court of equity and justice, we cannot also brush aside the impediments raised by the State/appellants at this juncture.
13. Although, in principle, there might have been no reason to refute the offer of the writ petitioner/present respondent at the stage when the impugned order was passed, the alleged hindrances in giving shape to the project which are now cited were apparently detected after the passing of the impugned order, when the same was sought to be implemented.
14. In fact, if the impediment as projected by the appellants actually exist, the impugned order would be rendered unworkable and unimplementable.
15. As such, in view of the difficulties which have now arisen, the appropriate remedy before the present appellants would be to file an application for modification / recall of the order impugned on the grounds as taken in the present appeal, pointing out the exact

difficulties being faced by the appellants in implementing the order of the learned Single Judge.

16. We deliberately desist from interfering with the order for the two following reasons :

- i) that in principle we do not find any illegality in the impugned order sufficient to set aside the same within the limited scope of an intra-court appeal;
- ii) that since the disputes now having arisen pertain to implementation of the order of the learned Single Judge and not on the merits of the order itself as such, such subsequent issues ought to be projected before the learned Single Judge passing the impugned order, since otherwise the appellate court would be usurping the jurisdiction of the writ court and purport for all practical purposes to act as the first forum where the present difficulties are being thrashed out.

17. Accordingly, MAT No. 868 of 2024 along with CAN 2 of 2024 are disposed of without interfering with the impugned order, but granting liberty to the appellants to file an appropriate application for modification of the order impugned herein dated March 10, 2022 passed in WPA No. 20106 of 2021.

18. If such an application is filed by the appellants, the learned Single Judge is requested to hear the same upon giving adequate opportunity to the writ petitioner/ present respondent to file opposition thereto and giving opportunity of hearing to both sides and to dispose of the same in accordance with law.
19. It is made clear that it will be open to the writ petitioner/present respondent, in view of the long delay, to withdraw the offer, on the basis of which the impugned order was passed, before the learned Single Judge.
20. Urgent photostat certified copies of the order, if applied for, be supplied to the parties at an early date.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)