

MAT 1660 of 2024
with
IA No. CAN 1 of 2024
with
IA No. CAN 2 of 2024
with
IA No. CAN 3 of 2024

(Surabuddin Molla Vs. Sohan Lal Manpuria & Ors.)

Mr. Krishnendu Bera
Ms. Debolina Chakraborty
.... For the appellant

Mr. Debayan Bera
Mr. Sakti Prasad Chakrabarti
..... For the respondent nos. 1 & 2

Mr. Niladri Bhattacharjee
Ms. Deblina Chattaraj
..... For the respondent nos. 4 & 5

Mr. Nilotpal Chatterjee
..... For the respondent no. 11

Mr. Amal Kumar Sen, Ld. AGP
Ms. Ashima Das (Sil)
..... For the State

The application being CAN 1 of 2024 has been preferred by one Surabuddin Molla claiming himself to be the present Secretary of SD-16, Bus Owners' Association (in short, said Association) and seeking leave to prefer appeal against the order dated 15.05.2023 passed by the learned single Judge in the writ petition being MAT 1660 of 2024.

Mr. Krishnendu Bera, learned advocate appearing for the applicant submits that initially a writ petition being WP 1214 (W) of 2012 was preferred by the writ petitioners/respondents 1 and 2 herein, *inter alia*, praying for issuance of necessary direction upon the respondents not to use the lands of the writ petitioners

recorded in RS Plot No. 124/167, 136 and 137 of Mouza Barakhola, J. L. No. 21, P.S. Purba Jadavpur, District South 24 Parganas measuring about 155 cottahs (hereinafter referred to as the said land) as bus terminus and to vacate the said land and to hand over possession of the same to the writ petitioners. The said writ petition was disposed of by an order dated 04.04.2017 directing, *inter alia*, that no bus shall be allowed to be parked on the said the order with a further direction that if such parking is noticed, the District Magistrate and the Commissioner shall take appropriate to remove such parking. Aggrieved by the said order, one Alimal Islam Molla claiming himself to be Secretary of the said Association preferred an appeal being MAT 1639 of 2017. The Hon'ble Appeal Court upon observing that as the appellant is a bus operator as well as the Secretary of the said Association, the impugned order could not have been passed by the Hon'ble single Judge without impleading the said appellant. On such limited ground the appeal was allowed along with the application for stay. The order impugned in the said writ petition dated 04.04.2017 was set aside with a direction that the matter shall be heard afresh by the single Judge upon the appellant being added as respondent in the writ petition. Pursuant to the said order dated 11.01.2018, Alimal Islam Molla was impleaded as a party respondent to the writ petition as Secretary of the said Association.

He submits that during pendency of the writ petition upon remand, the present applicant was elected as the Secretary of the said Association on 26.09.2021 but he was never provided any information about listing and hearing of the writ petition. In view thereof, appropriate steps could not be taken and the writ petition was ultimately disposed of in his absence.

Such contention of Mr. Krishnendu Bera has been denied and disputed by Mr. Debayan Bera, learned advocate appearing for the writ petitioners/respondents. He submits that after the matter was sent back on remand, Alimal Islam Molla was duly impleaded and repeated notices were served including publication of a notice in the local two newspapers as per the direction of the learned single Judge. In spite of such notices the present applicant did not take any step to appear and contest the matter as such his prayer for leave to appeal needs to be rejected.

Considering the arguments, as advanced and as it had been the direction of the earlier coordinate Bench of this Court that an appropriate opportunity of hearing ought to have been granted to the said Association prior to disposal of the writ petition, we grant leave to the applicant to prefer appeal. The application being CAN 1 of 2024 is, accordingly, disposed of.

As we have invited the learned advocates appearing for the respective parties to advance their arguments

on merits of the matter, delay in preferring the appeal is also condoned and the application for condonation of delay being CAN 2 of 2024 is disposed of.

Records further reveal that the writ petition was initially preferred impleading the State and its functionaries. However, subsequently all the other permit holders including the appellant were brought on record. In spite of repeated directions, no one appeared in the writ petition on behalf of the permit holders.

On the merits of the appeal it is submitted on behalf of the applicant/appellant that as the *lis* involves disputed questions of fact and as the primary prayer was for recovery of possession, the writ Court was not the proper forum. The applicant is a permit holder and the said Association is possessing and utilizing the land for a period of more than 20 years. The right created on the basis of such long possession adverse to the writ petitioners ought not to have been interfered with by the writ Court.

Mr. Debayan Bera, learned advocate appearing for the writ petitioners/respondents denies and disputes the contention of the appellant and drawing our attention to the report as filed by the Commissioner of Police, Kolkata pursuant to the direction of the learned Court in the earlier round of litigation, he submits that the District Magistrate, South 24-Parganas *vide* memo dated 31st March, 2017 specifically stated that no notification had been issued in terms of Sections 116,

117 of the 1988 Act and Rule 182 of the said Rules by RTA, South 24-Parganas in respect of the said land.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The argument advanced on behalf of the applicant that to get back possession of the said land, the writ petitioners ought to have approached the competent civil forum is not acceptable to us. The land was being illegally utilized in derogation to the provisions of the Motor Vehicles Act, 1988 and the Motor Vehicles Rules, 1989 leading to infringement of a legally protected right of the appellants. They were being deprived of their right to enjoy the land without any authority of law and in the said conspectus, appropriate directions have been issued not to use the land as a bus stand/terminus. It is explicit from the records that there had been a statutory violation and in the backdrop of such circumstances, the writ Court rightly interfered.

The learned single Judge, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned. No legally protected right of the appellant, which can be judicially enforced, has been infringed and the order impugned does not suffer from any jurisdictional error or any substantial failure of justice warranting interference of this Court.

Accordingly, the appeal and the stay application are dismissed.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)