

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

M.A.T. 103 of 2024
(CAN 1 of 2024)
(CAN 2 of 2024)
(CAN 3 of 2024)

Narayan Prasad Lohia
-Vs-
The State of West Bengal & Ors.

For the Appellant : Mr. Kushal Chatterjee, Adv.
Mr. Debrup Chowdhury, Adv.
Mr. Rajdeep Das, Adv.

For the respondent : Md. Shoaib Akhtar, Adv.
No.6

For the respondent : Dr. Navin Barik, Adv.
No.7 Ms. Esha Acharya, Adv.

For the State : Mr. Joyjit Choudhury, Id. A.A.G.
Ms. Rima Sarkar, Adv.

Heard on : 22.01.2025

Judgment on : 22.01.2025

Joymalya Bagchi, J. :-

Re : C. A. N. 1 of 2024

1. The application being CAN 1 of 2024 has been filed under Section 5 of the Limitation Act for condonation of delay.
2. Having considered the averments made in the application for condonation of delay being CAN 1 of 2024 and being satisfied with the explanation given, we are inclined to condone the delay in preferring the appeal.
3. The application being CAN 1 of 2024 is allowed.

Re : M. A. T. 103 of 2024

4. Appellant has assailed judgment and order passed by the Hon'ble Single Judge whereby the Hon'ble Judge directed Commissioner of Police to look into the complaint of the respondent no.7/writ petitioner alleging unauthorized demolition of a boundary wall under the guise of handing over seized articles i.e. three underground oil tanks.
5. A brief factual sketch giving rise to the appeal is as follows :-
6. Respondent no.7/writ petitioner and his sister i.e. respondent no.6 are the lessors of the property. Appellant was a lessee of the said property which has since been terminated. Appellant was running a retail petrol pump under the name and style of '*M/s. East India Service Station*' on the leasehold land. In 2001 on the allegation of selling adulterated oil, his licence was terminated by Indian Oil Corporation Limited (*hereinafter referred to as 'IOCL'*). A criminal case was registered

against him and the petrol pump was sealed. Subsequently appellant was acquitted from the said case. After acquittal, appellant sought to renew his business and took steps to take possession of the underground tanks in the property. In the meantime, the said property had been partitioned between the respondent no.7/writ petitioner and his sister viz. Mayna Gope (respondent no.6).

7. Alleging the appellant with the aid of police personnel had trespassed the property and demolished the boundary wall, respondent no.7/writ petitioner approached this court for various directions.

8. Hon'ble Single Judge after considering the contentions of respondent no.7/writ petitioner and the State respondents, inter alia, held as follows :-

"I have taken into account the submissions of the Id. Advocate appearing for the petitioner as also the State and on an appreciation of the same, I find that there was no direction for removal of the wall and under the garb of the removal of tank, the demolition, if any, of the wall has been extended.

Whether the conduct of the police authorities, in this case, are correct and are in consonance with the purpose for which they have been employed, the Commissioner of Police will check the same, further, whether there is any demolition of the structure of the property would also be checked by him. In case, there is a demolition in the structure of the boundary wall, he would also check whether the underground tank is beneath the boundary wall for which the boundary wall was demolished. The commissioner of police will also check, whether any information/complaint was lodged at the police station at the time of demolition of the wall and the police authorities were not responding to such complaint mode.

If the aforesaid conditions are satisfied and is there is no court order for demolition of the structure as has been submitted and, initially, instructed to the Id. Advocate for the State, I direct the Commissioner of Police to register a

case against the delinquents including the Public Servants so involved in ransacking the property of the petitioner. With the aforesaid observations, WPA 1381 of 2024 is disposed of.” (emphasis supplied)

9. Mr. Kushal Chatterjee for the appellant challenging the aforesaid order submits his client had not been heard. Without giving an opportunity of hearing, Hon’ble Single Judge had come to a finding there was no direction for removal of wall by the Judicial Magistrate and under the garb of removal of tanks, demolition has been made. He also contends in a collateral proceeding taken out by the sister of respondent no.7/writ petitioner, a coordinate Bench in MAT 1399 of 2014 had relegated the parties to the civil court.

10. Dr. Navin Barik for the respondent no.7/writ petitioner submits the appellant had illegally demolished the partition wall. Thereafter, he lodged false criminal cases alleging the underground tanks had been stolen by his client. Respondent no.7/writ petitioner had been granted pre-arrest bail in CRM (A) 22 of 2025 in the said case.

11. Learned Additional Advocate General submits Commissioner of Police has made an enquiry and report has been filed before this court.

12. Having heard the learned Advocates at the Bar we are of the view Mr. Chatterjee’s submission that the Hon’ble Single Judge had made conclusive finding that his client had demolished the boundary wall under the garb of removal of tanks is misconceived. The said observation has to be read in light of the final direction given by the Hon’ble Single

Judge that all the factual aspects including the issue whether there was any court order for demolition of the structure etc. were to be enquired by the Commissioner of Police. The impugned order does not finally decide any issue to the prejudice of the appellant.

13. Be that as it may, Commissioner of Police had already undertaken the enquiry and the report has been placed before us. Relevant portion of the report is set out hereinbelow :-

“i. ‘Whether the conduct of the police authorities, in this case, are correct and are in consonance with the purpose for which they have been employed, the Commissioner of Police will check the same’ –

Observation : It appears that the I/C Pradhan Nagar PS intended to comply with the directions of the Ld. Judicial Magistrate (1st Court) at Siliguri to handover the seized articles to Narayan Prasad Lohia and accordingly vide Pradhan Nagar PS GDE No. 1599 dated 30.06.2024 visited the spot along with the Officers and force was deployed there to maintain law and order. On 1st July, 2024 the Narayan Prasad Lohia engaged labourers with equipment to excavate the soil to take out the oil tankers from under the ground and during such excavation, it was found that there was a brick wall standing over one of the oil tank as a result of which the said wall was partially damaged. Due to the said wall, the process of excavation was stopped. Hence, the conduct of the Police personnel was in consonance with the Order passed by the Ld. Court.

ii. Whether there is any demolition of the structure of the property would also be checked by him.

Observation : There was no demolition of any structure but a part of the brick wall was damaged and broken (around 1.5. meters) due to the excavation process.

iii. In case, there is a demolition in the structure of the boundary wall, he would also check whether the underground tank is beneath the boundary wall for which the boundary wall was demolished.

Observation : There was underground tanks beneath the boundary wall due to which the boundary wall was damaged and partially broken.

iv. Whether any information/complaint was lodged at the police station at the time of demolition of the wall and the police authorities were not responding to such complaint made

Observation : There was no complaint with regard to any such demolition and as such the question of not responding to the such complaint did not arise. However, from the records of the Pradhan Nagar PS, it was found that on 16.07.2024, one Nirmal Kumar Ghosh had lodged a complaint with regard to setting up of an unauthorised hoarding with IOCL logo and a specific case has been registered u/s. 329(3)/324(4)(5) of BNS.”

14. No exception has been taken to the said findings by either of the parties.

15. A perusal of the findings would clearly show the demolition of a part of the brick wall was an inadvertent casualty when the excavation process was undertaken to recover the three underground tanks for handing them over to the appellant. Given this situation it appears the demolition was intrinsically connected with the discharge of official duty i.e. recovery and handing over of seized items i.e. underground tanks to the appellant.

16. It is also relevant to note underground tanks were found missing and it is alleged respondent no.7/writ petitioner had removed them. However, noting the accusation was based on mere suspicion and that the owners of the said tank i.e. IOCL had not lodged any complaint against respondent no.7/writ petitioner, this court was inclined to grant pre-arrest bail to him.

17. With regard to the observations made by the coordinate Bench in MAT 1399 of 2014, we are of the opinion the issues raised in the said proceeding are different from the present one. Mat 1399 of 2014 arose from an order passed in a writ proceeding instituted by the sister of respondent no.7/writ petitioner i.e. Mayna Gope (respondent no.6) in 2013. Mayna Gope had entered into an agreement with the appellant for sale of her share of the property. Her grievance was in respect of illegal parking in her portion of the land by the appellant. Noting an arbitration clause in the agreement for sale the alleged wrongful use by the appellant was relegated to civil proceeding. The aforesaid direction has no relevance to the matters in issue in the present appeal.

18. In light of the aforesaid discussion, we approve the findings of the Commissioner of Police in the report and accordingly hold no further registration of FIR is necessary.

19. Needless to mention criminal cases lodged by respondent no.7/writ petitioner as well as the appellant shall be investigated fairly and in accordance with law. Steps shall be taken for recovery of the underground tanks and, if recovered, they shall be restored to its lawful owner.

20. MAT 103 of 2024 is accordingly, disposed of.

21. In view of disposal of the appeal, connected applications being CAN 2 of 2024 and CAN 3 of 2025 are also disposed of.

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

23. Urgent photostat certified copy of the judgment, if applied for, be given to the parties on usual undertaking.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

as/akd