

Item No.10
15.06.2026
Court. No. 12
GB

MAT 958 of 2026
With
CAN 1 of 2026

Anubhab Bera
Vs.
The State of West Bengal & Ors.

*Mr. Sudeep Sanyal, Sr. Adv.,
Mr. Sukanta Das,
Mrs. Tutun Das,
Mr. Chandrachur Lahiri,
Mrs. Anulekha Bera Maity*

...for the Appellant.

*Mr. Sanjaty Bandyopadhyay,
Mr. Subhamoy Dutta*

...for the Municipality.

*Mr. Rabindranath Mahato,
Mr. Aritra Shankar Ray*

...for the Respondent No.6.

1. We have considered the rival contentions of the parties as also the order impugned before us. We are of the view that the learned Single Judge rightly relegated the matter to the municipality, in view of the fact that the claim /objection of the respondent no.6 with regard to the transfer of tenancy sometime in 2021 by the erstwhile tenant of the said shop room, upon acceptance of a sum of Rs.11,00,000/-, and upon affirmation of an affidavit before the first class Judicial Magistrate, had not been taken into consideration at the time of mutation and issuance of certificate of enlistment in favour of the appellant.
2. Mr. Sanyal, learned senior advocate for the appellant submits that once the municipality had recognized the

appellant as a tenant and had issued a certificate of enlistment, the learned Single Judge could not have set aside either the mutation or the certificate of enlistment, thereby, depriving the appellant from a legitimate right.

3. On the other hand, the municipality had affirmed an affidavit before the writ court which states that the respondent no.6 had not approached the municipality by seeking mutation, prior to the appellant's prayer for mutation. The respondent no.6 also did not pray for grant of enlistment.
4. Mr. Mahato, learned advocate for the respondent no.6 submits that an objection was filed on the same date the mutation was granted in favour of the appellant. That a sum of Rs. 11,00,000/-, was paid to the heirs of the erstwhile tenant. The appellant did not make any payment. The transfer in favour of the respondent No. 6 was prior in date.
5. However, it cannot be understood from the documents, as to whether the objection was filed before the decision was taken by the municipality in favour of the appellant. Even if the objection bears the same date as the date on which the mutation was granted, the availability of the objection prior to the decision, is in doubt. The municipality's clear stand was that they would reconsider the matter.

6. During the subsistence of such dispute, both the parties approached the civil court by filing their respective suits. The respondent no.6 failed to obtain any protective order of injunction. On the other hand, in a misc. appeal the appellant has been protected by an order of injunction to the extent that the municipality could not disturb the appellant.
7. The dispute is over tenancy in respect of a shop room from which a business is being operated. Thus, in our view, cancellation of the certificate of enlistment by the learned trial Judge, before the municipality had decided the matter, affects the appellant's livelihood. Moreover, the appellant has also been protected by an order of interim injunction, in a civil suit.
8. In our view, status quo with regard to the nature and character of the property does not help the appellant. Rather, the cancellation of the certificate of enlistment deprives the appellant from continuing with the business. When the learned single Judge was of the view that the matter should be adjudicated afresh by the municipality, in that event the appellant should have been allowed to continue the business from the said shop room on the basis of the certificate of enlistment.
9. Under such circumstances, the part of the order by which the mutation and certificate of Enlistment were set aside, is quashed. The municipality will decide the entire issue afresh, upon hearing both the parties. The

mutation and certificate of enlistment of the appellant will be subject to the decision of the municipality. We have not expressed any opinion with regard to the civil suits.

10. The municipality is the landlord. The municipality will decide on the basis of the documents that shall be furnished by the parties, including the original terms and conditions of the tenancy granted by the municipality to Trinanjan Das Mahapatra i.e. the original tenant. The orders passed in the civil suits shall also be looked into.
11. We have not made any observations on the merits of the claims and counter-claims of the parties. The priority of the claim of tenancy shall be subject to any further decision by any competent civil court in an appropriate proceeding.
12. The municipality will take a decision within a period of six weeks from date. The decision shall be communicated to the parties.
13. Accordingly, the appeal and the application are disposed of.
14. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)