

31.01.2024

Item No.14.

Court No.6.

AB

M.A.T. 60 of 2024

With

CAN 1 of 2024

CAN 2 of 2024

**The Managing Director, West Bengal
Highway Development Corporation Ltd.**
Vs
Sudharani Mondal & Others

Mr. Anirban Ray, ld. GP,

Mr. Tanay Chakrabortyfor the Appellant.

Mr. Mukul Biswas,

Mr. Pradip Palfor the Respondent No.1/
Writ Petitioner.

In re : IA CAN 1 of 2024

This is an application for condonation of delay of 178 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

I A CAN 1 of 2024 is, accordingly, disposed of.

In re : MAT 60 of 2024, IA CAN 2 of 2024

This appeal is directed against a judgment and order dated June 12, 2023, whereby the writ petition of the respondent no.1 herein, being WPA 5328 of 2023, was disposed of by a learned Judge of this Court.

It appears that the writ petitioner had approached the learned Single Judge with a grievance that there has been illegal encroachment on Government land under the control of the West Bengal

Highway Development Corporation Limited, the present appellant.

The learned Judge noted that in an earlier writ petition filed by the present writ petitioner being WPA 3430 of 2021, a learned Judge by an order dated September 2, 2021, as modified on September 27, 2022, had directed the concerned Authority to dispose of the application filed by the writ petitioner within a stipulated period after observing the principles of natural justice.

Pursuant to such order, the appellant by an order dated 07.11.2022 recorded that there are occupants on Government land for the past 15 years and there is no reason to remove such occupants till the land is required by the Government.

The learned Judge disposed of the writ petition with the following observations and directions:

"It is strange to note that though the concerned authority found illegal encroachment on Government land, he refrained from removing such encroachment for reasons best known to him which may in all probability be extraneous in nature. Such a decision is not only ridiculous, but is also unknown to law.

In view of the above, this Court is inclined to hold that since encroachment upon Government land has been found by the authority, the concerned authority, being the 2nd respondent herein, is directed to take necessary steps for removal of such encroachment within one month from the date of communication of this order upon affording reasonable opportunity of hearing to all the interested persons including the petitioner, in accordance with law."

Being aggrieved, the respondent no.2 in the writ petition has come up by way of this appeal.

Learned Government Pleader appearing for the appellant says that it was not proper on the part of the learned Single Judge to come to a finding that there is encroachment on Government land and to direct removal of such encroachment. The learned Judge ought to have directed that proper procedure be followed under the West Bengal Highway Act, 1964.

There may be some substance in the submission of learned Government Pleader. However, we find that the order of the learned Single Judge has been carried out by the Competent Authority and, therefore, nothing remains in this appeal. This appeal has become academic. We, however, leave it open for the appellant herein or the State to argue in an appropriate case that for removal of encroachment from Government land, the relevant procedure laid down in the concerned Statutes should be followed.

Learned Government Pleader says that the observation of the learned Judge that the concerned Authority, in spite of finding illegal encroachment on Government land, refrained from removing such encroachment “for reasons best known to him which may in all probability be extraneous in nature”, is without any basis. We do not think that such observation was required to be made. Such observation stands expunged.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)