

(2018) 12 CAL CK 0098
In the Calcutta High Court

Case No : Tender Of Mand Appeal No. 1443 Of 2018, Civil Application No. 9479 Of 2018

Jyoti Prakash Har

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 13-12-2018

Acts Referred:

Citation : (2018) 12 CAL CK 0098

Hon'ble Judges : Biswanath Somadder, J;Arindam Mukherjee, J

Bench : Division Bench

Advocate : Kamalesh Bhattacharya, M.A. Samad, S.K. Khanam, Sakya Sen, Tapas Ballav Mandal

Final Decision : Dismissed

Judgement

Biswanath Somadder, J.

Affidavit of service filed in Court today be taken on record.

By consent of the parties, the appeal is treated as on day's list and taken up for consideration along with the application for stay.

The instant appeal arises out of a judgment and order dated 12th November, 2018, passed by a learned Single Judge in WP 20744 (W) of 2018 (Jyoti Prakash Har vs. The State of West Bengal & Ors).

By the said order, the learned Single Judge was pleased to dispose of the writ petition on the following terms:-

"In the facts of the present case, it would be appropriate to direct the petitioner to contest the two notices by filing a reply to such notices. The final amount demanded from the petitioner is a sum of Rs.3,53,276/-. The petitioner will pay such amount to the authorities within seven days from date. The payment of such amount and the acceptance thereof will be without prejudice to the rights and contentions of the parties to the proceedings. The respondent no.4 will

decide the show-cause notices after affording a reasonable opportunity of hearing to the petitioner and pass a reasoned order thereon. It is expected that, the entire exercise is completed within six weeks from the date of communication of this order to him. In the event of default of the petitioner depositing the sum as directed by this order, the authorities are at liberty to take steps for the purpose of closing the brickfield, in accordance with law."

The appellant before us is the writ petitioner. According to the learned advocate for the appellant/writ petitioner, the demand raised in the impugned two notices was without any basis whatsoever. The two demand notices also do not mention the quantum of earth actually extracted, which forms the very basis for raising such demand. As such, he submits that the learned Single Judge ought not to have passed any direction upon the appellant/writ petitioner for making payment as specified in the said two demand notices.

A bare perusal of the impugned judgment and order reveals that the learned Single Judge has - in fact - taken into consideration the very contention which is sought to be raised before us by the appellant/writ petitioner and that is, the demand raised in the impugned notices is without any basis. Keeping this aspect in mind, the learned Single Judge has directed the appellant/writ petitioner to pay the said amount as specified in the two impugned demand notices to the authorities within a certain timeframe and such payment or acceptance thereof will be without prejudice to the rights and contentions of the parties to the proceedings. The respondent authority has been directed to decide the show-cause notices after affording a reasonable opportunity of hearing to the appellant/writ petitioner and pass a reasoned order thereon. A certain timeframe has also been fixed by the learned Single Judge for completion of the entire exercise.

In an Intra-Court Mandamus Appeal, interference is usually warranted only when palpable infirmities or perversities are noticed on a plain reading of the impugned judgment and order. We do not notice any such palpable infirmity or perversity on a plain reading of the impugned judgment and order dated 12th November, 2018. That apart and in any event, the impugned judgment and order is supported with cogent and justifiable reasons.

In the event, the concerned respondent authority - after deciding the matter - refixes the amount payable by the appellant/writ petitioner in terms of the two demand notices and if such refixed amount is less than the amount as specified in the impugned two demand notices, the appellant/writ petitioner shall be entitled to get a refund of the excess amount paid, from the concerned respondent, forthwith.

The appeal and the application for stay are liable to be dismissed and stand accordingly dismissed subject to the observation made in the preceding paragraph.