
(2018) 03 CAL CK 0045
In the Calcutta High Court
Case No : W.P. 13801 (W) of 2017

MD. ABDUR RAHAMAN SK. & ORS.

APPELLANT

Vs

STATE OF WEST BENGAL & ORS.

RESPONDENT

Date of Decision : 09-03-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 03 CAL CK 0045

Hon'ble Judges : PROTIK PRAKASH BANERJEE, J

Bench : Single Bench

Final Decision : Allowed

Judgement

This writ petition was first moved on January 10, 2018 when an interim order was passed.Â The interim order was passed being satisfied, prima

facie, with the case made out by the writ petitioners.Â However, because the respondents were alleged to have contended that the property had been

acquired by a case of 1974-75, contrary to the records issued on November 26, 2015, I had directed affidavits to be filed.

At the time when such direction was given there was no impediment whether actual or perceived to file an affidavit within three weeks from January

10, 2018, which was the period granted.

However, an office note of February 20, 2018 showed that despite expiry of such time no affidavit had been filed.Â Hence, I directed on February

28, 2018 that affidavits should either be filed by today or it would be presumed, if none appeared to seek time for extension, the respondents would be

deemed to have admitted the statements contained in the writ petition.

It has been brought to my notice that the learned advocates are still not

appearing in Court.Â This case would have been disposed of by virtue of the above orders on the basis of my earlier order.Â However, both the writ petitioners and the State respondents are party litigants.Â They ought not to suffer because of what their learned advocates have chosen to do.Â Accordingly, my conscience does not permit me to either dismiss the writ petition for default in appearance of learned advocates or allow it ex parte for the same reasons.

I believe that the interest of justice shall be sub-served if the interim order originally granted on January 10, 2018 and which, expired with the expiry of February 28, 2018, is extended till disposal of the writ petition in view of the continuance of the prima facie case recorded in pages 1, 2 and 3 of the order sheets of the order dated January 10, 2018 and subject to the same qualifications as mentioned in the first sentence of the last paragraph at page 3 of the order sheet of the order dated January 10, 2018.

I make it clear that the extension is made in exercise of my plenary powers to do justice under Article 226 of the Constitution of India.

The respondents shall be at liberty to file affidavits-in-opposition before the matter appears in the list once again and if such affidavits-in-opposition are filed, the writ petitioners may file affidavit-in-reply, if any, within one week from receiving copies of the affidavits-in-opposition.Â In case on the day that the writ petition appears, the respondents will have not yet filed the affidavits-in-opposition or have not served copies thereof or have not even affirmed any opposition, the defence of the respective respondents shall be struck off.Â The writ petitioners shall have liberty to mention the writ petition on completion of the affidavits and when the matter is ready for hearing.Â The date when the writ petition shall appear on such mentioning shall be fixed as and when the matter is mentioned.Â The writ petition shall for the present go out of list.

Let a copy of this order be communicated to the learned advocate on record of the writ petitioners who appeared on January 10, 2018 and also to the learned Government Pleader, Mr. Joytosh Majumder, by a letter signed by the principal officer of this Court.

The note given by the department on March 8, 2018 is dealt with accordingly and the role of the department is appreciated.