

(2018) 12 CAL CK 0099

In the Calcutta High Court

Case No : Tender Of Mand Appeal No. 1446 Of 2018, Civil Application No. 9495 Of 2018

Sushanta Patra

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 13-12-2018

Acts Referred:

Citation : (2018) 12 CAL CK 0099

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

Bench : Division Bench

Advocate : Kamalesh Bhattacharya, M.A. Samad, S.K. Khanam, Sirsanya Bandopadhyay, Subhendu Sengupta

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 20750 (W) of 2018 (Sushanta Patra 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:-

"It appears from the records that, there is a demand of a sum of Rs.3,53,276/- made against the petitioner by a writing dated September 12, 2018. The petitioner will deposit such amount of Rs.3,53,276/- with the authorities within seven days from date. In the event of default of depositing the amount as directed, the authorities are at liberty to take expeditious steps for the purpose of closing the brickfield, in accordance with law. Upon deposit of the sum of

Rs.3,53,276/-, the petitioner is at liberty to submit a written reply to the notice dated September 12, 2018. The respondent no.4 will hear and decide the issues raised in accordance with law. He will quantify the final amount payable by the petitioner. He will pass a reasoned order which he will communicate to the petitioner forthwith thereafter. The payment and the receipt of Rs.3,53,276/- will be without prejudice to the rights and contentions of the parties. The same will abide by the result of the decision to be taken by the respondent no.4."

The appellant before us is the writ petitioner. According to the learned advocate for the appellant/writ petitioner, the demand raised in the impugned notice was without any basis whatsoever. The demand notice also does 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 demand notice.

A bare perusal of the impugned judgment and order reveals that the learned Single Judge has directed the appellant/writ petitioner to pay the said amount as specified in the impugned demand notice 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.

However, it is made clear that in the event, the concerned respondent authority - after deciding the matter - refixes the amount payable by the appellant/writ petitioner in terms of the demand notice and if such refixed amount is less than the amount as specified in the impugned demand notice, 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.