

04.12.2023
Item no.6.
Court No.6.
AB

M.A.T. 1716 of 2023
With
IA CAN 1 of 2023
IA CAN 2 of 2023

The Bhadreswar Municipality
Vs
Tarak Nath Singh & Anr.

Mr. Debabrata Saha Roy,
Mr. Somnath Roy,
Mr. Subhankar Debfor the Appellant.

In re : IA CAN 1 of 2023

This is an application for condonation of delay of 2 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

I A CAN 1 of 2023 is, accordingly, disposed of.

In re : MAT 1716 of 2023, IA CAN 2 of 2023

This appeal is directed against a judgment and order dated July 18, 2023, whereby the writ petition of the respondent no.1 herein, being WPA 2358 of 2022, was, in effect, allowed by a learned Judge of this Court.

From the affidavit of service filed in Court today, we find that the respondent/writ petitioner has been served. However, nobody appears for the writ petitioner.

The writ petitioner approached the learned Single Judge alleging that a plot of land belonging to him is under illegal possession/occupation of the

appellant Bhadreswar Municipality. It was submitted on behalf of the Municipality that the land in question had been voluntarily gifted by the writ petitioner to the Municipality way back on September 4, 1999. A community hall was constructed on that piece of land, which was inaugurated on September 24, 2010. Hence, the writ petition is merit less.

The learned Judge observed that there is no registered Deed of Gift in favour of the Municipality. The Municipality relied upon certain documents, which since are not registered documents, the learned Judge ignored.

The learned Judge disposed of the writ petition with the following observation and direction:

“This Court is of the opinion that the Municipality cannot force the petitioner to gift any land in its favour.

The essential requirement of gift is that the same should be given voluntarily and without any consideration.

There is nothing on record to suggest that there has been handing over of possession and acceptance of gift as required in law. In the absence of a valid deed of gift, the title of the property cannot be transferred.

In view of the above, the submission of the Municipality that the land in question was voluntarily gifted by the petitioner cannot be accepted by the Court.

The Municipality is, accordingly, directed to return and hand over possession of the subject plot of land to the petitioner at the earliest.

It the event the Municipality requires the land in question, it will be open for the Municipality to

initiate proceeding for acquisition of the same in accordance with law subject to payment of adequate compensation.”

Being aggrieved, the Municipality has come up by way of this appeal.

Learned Advocate for the appellant-Municipality has drawn our attention to a Deed of Gift dated September 4, 1999, executed on stamp paper. The deed, however, is not registered. Nonetheless, the deed is signed by the writ petitioner and is clearly to the effect that the writ petitioner was voluntarily handing over the concerned plot of land to the Municipality.

Learned Advocate also drew our attention to a Deed of Declaration signed by the writ petitioner and others, again to the effect that the writ petitioner was on his own volition making over possession of the concerned plot of land to the Municipality.

Page 14 of the stay petition is a copy of the letter addressed by amongst others the writ petitioner to the Municipality requesting for mutation of the plot of land in favour of the donee.

Other documents have also been annexed to the stay petition in support of the Municipality's case that the writ petitioner voluntarily handed over possession of the concerned plot of land to the Municipality by way of gift to be utilized for community purpose.

It is true that the Deed of Gift is not registered. It is also true that without a registered Deed of Gift, title to a property could not pass. However, if the Municipality's case is accepted, then it cannot be said that the Municipality has no right in respect of the land at all.

Further, it is also pertinent to note that the writ petitioner approached the Court with the case of illegal occupation of his land by the Municipality, 23 years after execution of the deed of gift in favour of the Municipality and 12 years after inauguration of the community hall that has been constructed by the Municipality on the concerned plot of land. This undue and un-explained delay on the part of the writ petitioner has been overlooked by the learned Single Judge. The writ Court is a Court of equity. Delay defeats equity. A Court of equity does not come to the rescue of an indolent litigant who sleeps over his alleged legal right.

Still further, it appears that there has been gross suppression of material facts on the part of the writ petitioner. The documents referred to and produced with the stay petition by the appellant Municipality, were not disclosed by the writ petitioner along with the writ petition although the writ petitioner was a party to such documents which are very relevant documents. This kind of suppression

borders on practising fraud on Court which is sufficient ground for dismissal of the writ petition.

In any event, the present case, according to us, is not a fit case for being adjudicated by the Writ Court. The case involves disputed questions of title to land. The Civil Court is the proper and natural forum for adjudication of such a dispute, which may require recording of evidence by way of witness action.

We are also of the view that the learned Judge ought not to have allowed the writ petition on the very first day without permitting the Municipality to bring on record certain documents, which the Municipality wanted to rely upon. In effect, the writ petitioner has obtained a Decree of Eviction from the learned Single Judge without following due process of law.

Accordingly, we set aside the order under appeal and dismiss the writ petition. This will not prevent the writ petitioner from approaching the appropriate Civil Court with his claim for recovery of possession of the land in question. If such Civil Court is approached by the writ petitioner, the civil proceedings shall be decided by it without being influenced by anything in this order or in the order of the learned Single Judge, which is impugned before us.

Since no affidavit has been called for, the allegations made in the stay petition are deemed not to be admitted by the respondents.

MAT 1716 of 2023 is disposed of along with CAN 2 of 2023.

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

(Arijit Banerjee, J.)

(Prasenjit Biswas, J.)