

03 29.8.201

4

WP 9590(w) of 2009

ar

Mahendra Kumar Nathany &amp; Ors.

Vs.

The State of West Bengal &amp; Ors.

Mr. Samaraditya Pal,  
Ld. senior advocate  
Mr. Utpal Majumder  
Mr. Pushan Kar  
Mr. Sanjoy Bose  
Ms. Tannistha Lahiri  
... For the Petitioners

Mr. Nirmal Kumar Manna,  
Ld. senior advocate  
Mr. Sanjib Das  
... For the State

The order impugned in the writ petition was passed by the appellate authority on March 31, 2009 which was filed against the order dated February 27, 2007 by the competent authority. By the order impugned, the appeal of the petitioners was rejected and the order of the competent authority was affirmed.

While challenging the said order, one of the principal grievances of the petitioners is that an enquiry was conducted by a Deputy Magistrate which was strongly relied upon by the appellate authority. But it was never disclosed to the petitioners.

According to Mr. Pal, the learned senior

counsel appearing for the petitioners, this non-disclosure has prejudiced the petitioners and they did not have the opportunity to make any submission in respect thereof, either to the competent authority or to the appellate authority.

Mr. Manna, the learned senior counsel for the State respondents, did not dispute the validity of the submission of Mr. Pal that the petitioners are entitled to a copy of the order on which the appellate authority had relied upon. He, however, prays for sending the matter back to the appellate authority for a fresh consideration after supplying a copy to the petitioners and after giving them an opportunity to file their objection thereto, if necessary. According to him, sending it to the competent authority, i.e. the first authority might unnecessarily delay the conclusion of the proceeding.

It is true that the appellate authority while relying on the enquiry report of the Deputy Magistrate had specifically recorded that the competent authority did not rely upon the said report but that does not necessarily mean that the petitioners shall not get a copy thereof if that had been filed before the competent authority.



I quite agree with the submission of Mr. Pal that there is a possibility that once a document has been filed and placed on record before the competent authority, a party must have an access to the same even if it is not relied upon by the authority. The petitioner, or for that matter any party to a proceeding, is entitled to a two-stage hearing if the rules so permit. If an order had been passed without disclosing a document to a party, the hearing at the first stage is necessarily vitiated by the non-compliance of principle of natural justice notwithstanding whether this was used by the competent authority. Therefore, the violation of natural

justice is not cured by the superior Court's complying with the said principle. That apart, it is immaterial what the enquiry report ultimately contains. A document filed before an adjudicating authority must be made available to all parties no matter how they can utilise.

The appellate authority undoubtedly has strongly relied on it. Therefore, the order of the appellate authority is liable to be set aside on that ground alone. But in view of what has been discussed above, I find that the petitioners should also be given an opportunity to make

proper oral submissions to the competent authority de novo after getting a copy of the enquiry report and all other reports which might not have been given to the petitioners before the order, dated February 27, 2007, was passed.

I fully appreciate the anxiety expressed by Mr. Manna that the proceeding might have been further delayed in the process. He has also referred to the location and the value of the property. But from order it is clear that the competent authority himself did not, even after the submission of written notes and conclusion of hearing, pass any order for years together.

I thus set aside the order passed by the competent authority and the appellate authority dated March 31, 2009 filed in Appeal Case No. 3 of 2007 as well as the order of the competent authority dated February 27, 2007 and send the matter back to the competent authority for a de novo hearing of the matter.

The competent authority shall fix a date and notify the same to the parties for taking an

inspection of all the documents placed on record and shall then proceed to dispose of the same by giving the parties an opportunity to make submissions. In any case, the competent



authority shall dispose of the matter within a period of ten weeks from the date of communication of the order, as prayed for by Mr. Manna.

Considering the fact that the matter has been pending for a long time, the competent authority is directed not to grant any adjournment to either of the parties unless of course it is absolutely necessary, while hearing the matter afresh he shall not be influenced by the stand taken earlier.

The time fixed by this Court is to be treated as mandatory.

The writ petition is disposed of.

There shall be, however, no order as to costs.

Urgent xerox certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Dr. Sambuddha Chakrabarti, J.)

Later: Mr. Manna, after the delivery of the order, has prayed for permission to hold a fair on the concerned land between middle of March and middle of April, 2015.

In view of the order passed by a Division Bench on August 21, 2014 in MAT 1011 of 2014, such prayer of Mr. Manna is refused.

(Dr. Sambuddha Chakrabarti, J.)