

26-06.2019
Court No.3
Sh/25.

**CIRCUIT BENCH OF
CALCUTTA HIGH COURT
AT JALPAIGURI
WRIT APPELLATE JURISDICTION
APPELLATE SIDE**

W.P.A. 139 of 2019

Jagdish Sharma. . . . Petitioner.
Vs.
Union of India & Ors. .Respondents.

Mr. Avik Sarkar,
Ms. Soma Chowdhury Bandhu.
. . .For the petitioner.
Mr. Rajdeep Biswas.
. . . For the Union of India.

The petitioner claims to be the owner of a plot being New Plot No.314, New Khaitan No.156 of Mouza Khopalasi, J.L. No.21 (New), P.S. Matigara, District Darjeeling.

The petitioner claims to have purchased the said plot of land by a registered of conveyance dated 18th June 2002. The petitioner raised a construction of dwelling house after obtaining a sanctioned plan from the concerned authority. The petitioner alleges that though he has constructed a building on his plot of land but the Estate Officer acted illegally by directing him to remove such construction alleging that the said construction has encroached a portion of the defence land. A show-cause notice dated 22nd February, 2019 was issued by the Estate Officer calling upon the petitioner to remove such unauthorized encroachment within fifteen days from the date of receipt of the notice. The petitioner duly replied to the same by a letter dated

March 14, 2019, which was duly received by the Estate Officer.

The grievance of the writ petitioner is that the Estate officer has not yet taken any decision on the reply of the petitioner to the show-cause notice and are taking step to demolish the alleged encroached portion of the building of the writ petitioner.

Today when the matter is taken up for hearing Mr. Biswas, learned advocate appearing on behalf of the Union of India submits that though a letter dated June 24, 2019 has already been dispatched on 25th June, 2019 at the address of the writ petitioner but he submits, on instruction, that there are certain defects in the said letter. He further submits that a fresh notice will be issued to the writ petitioner fixing a date of hearing for consideration of the reply of the petitioner to the show-cause notice and the letter dated 24th June, 2019 shall be treated to be withdrawn. The learned advocate appearing on behalf of the petitioner does not object to the same. The said letter dated 24th June, 2019 shall be treated to be as withdrawn. Mr. Biswas also submits that a fresh letter will be issued within a week from date.

Mr. Biswas, learned advocate appearing on behalf of the Union of India submits that since reply given by the writ petitioner to the show-cause notice issued by the Estate Officer, is pending consideration before the Estate Officer, the Estate Officer shall not take any step for demolition of the building and/or portion thereof of the writ petitioner till a decision is taken by the Estate Officer in this regard.

In view of the observations made hereinbefore the writ petition is disposed of.

There shall be no order as to costs.

Since the writ petition has been disposed of without calling for affidavits, the allegations contained in the writ petition shall be deemed not to have been admitted by the respondents.

Urgent Photostat certified copy of this order, if applied for, be supplied to the learned advocates appearing for the parties expeditiously on compliance of all requisite formalities.

(HIRANMAY BHATTACHARYYA, J.)