

18.11.2020

BP/BR
Item No. 4

IN THE HIGH COURT AT CALCUTTA,
CIRCUIT BENCH AT JALPAIGURI

WPA 8429 of 2020
With
CAN 1 of 2020

(Via Video Conference)

Uttam Dutta & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Arnab Sengupta
..for the petitioner.

Mr. Bikramaditya Ghosh
..for the respondents.

The petitioners undertake to appropriately stamp the petition as per the Rules within one month of resumption of normal functioning of the court. The petition is taken up through video conference on the basis of such undertaking.

The petitioners are the licence holders in respect of temporary structures in front of Matigara Hut / Bazar by the side of the main road. Such licence was admittedly was granted to the petitioners under Rules 35, 36 and 37 of the Rules of Darjeeling Improvement

Fund.

It is submitted by the learned advocate for the petitioners that the private respondent no.7 was granted patta in respect of two plots being plot nos. 156 and 157 situated just behind the hutments of the petitioners. The private respondent no.6 made a false allegation against the petitioners alleging inter alia that they had obstructed peaceful ingress and egress of private respondent no.7 to his plots.

Since the matter was not administratively considered by the competent authority, the private respondent no.7 moved this court under Article 226 of the Constitution of India which was registered as W.P. 16535(W) of 2018. The said writ petition was disposed of on 18th February, 2019 by a co-ordinate bench of this Court directing the competent authority to consider and dispose of the representation made by the petitioners, the private respondent no.6 herein within specific time limit. The Sub-Divisional Officer, Siliguri being the competent authority disposed of the said writ petition. The operative part of the order is as follows :-

“Finally, as per report submitted by Assistant Tehsilder, Matigara D.I. Fund Hat vide memo no. 3/DIF dated 20/01/2020 after spot inspection of the said area, it is found that Sri Tarun Kumr Saha has been using the original pathway which is on the post office

side as the main entrance and there is no obstruction in ingress or egress to his property. Hence, Sri Saha is directed to use this original pathway which he had been using since long as the main entrance . He is also directed to seek permission for all the shop construction he made, in writing and submitting prescribed fees properly.

The other parties, namely, Sri Bhanu Dutta S/o . Late Surendra Nath Dutta, Sri Ratan Dutta S/o. Sri Bhanu Dutta, Sri Pramod Gupta S/o. Late Bishun Chand Gupta, Uttam Dutta S/o. Late Gopal Chandra Dutta, Dilip Singha S/o. Nagen Singha and Smt. Anjana Das W/o. Sri Uttam Dutta are hereby directed to unblock the drain, not to construct any pucca structure over the hat-road, demolish pucca structure (if any), and not to encroach any portion of hat land. However, they may use open hat surface (not hat-road) by paying tolls like season ticket/SR fees.”

Now the grievance of the petitioners is that subsequent to the order dated 28th February, 2020 passed by the Sub-Divisional Officer, Siliguri, the Assistant Tahsildar, Matigara Hut directed the petitioners to demolish the structure of the petitioners within three days.

According to the learned advocate for the petitioners, the order passed by the Assistant

Tahsildar, Matigara on 3r^d October, 2020 against the petitioners are arbitrary, illegal and in violation of the provisions of the aforesaid Rules because of the fact that the petitioners are the licence holders on the basis of the said licence. They constructed the hutments. They are paying the toll taxes collected by Matigara Market Authority.

It is pointed out by the learned advocate for the private respondent no.6 that in paragraph 8 of the writ petition the petitioners themselves admitted that they have constructed pucca structures at their respective plots. Even assuming that the licence was granted under Rules 35 – 37, the petitioners have no authority to construct pucca structure over the land allotted to them. They are entitled to be to construct only temporary structures for their business purpose. Learned advocate for the respondents also draws my attention to the last paragraph of the order passed by the Sub-Divisional Officer, Siliguri wherein the petitioners were directed to unblock the drain, not to construct the pucca structure over the hut road demolish pucca structure (if any), and not to encroach any portion of hut land. However, they may use open hut surface by paying tolls like season tickets/SR fees.

Since the Assistant Tahsildar took step for demolition of pucca structure which admittedly were

constructed by the petitioners, they have come before this court for redressal.

Since the Rules themselves are sacrosanct and the impugned order does not violate any legal right of the petitioners, I do not find any reason to admit the instant writ petition.

The writ petition is thus summarily dismissed. Accordingly, the application being CAN 1 of 2020 is also dismissed.

(Bibek Chaudhuri, J.)

