

S/L 22  
19.03.2021  
Court. No. 24  
*suwayan*

WPA 9948 of 2020

Nibedita Dey & Ors.  
Vs.  
The State of West Bengal & Ors.

(Through Video Conference)

*Mr. Soumyajit Bhatta*  
*Mr. Prasenjit Dey*

*...for the Petitioners.*

*Mr. Manas Kumar Kundu*

*...for the State.*

*Mr. Sudeep Sanyal*  
*Mr. Sukanta Das*

*...for the Municipality.*

The complaint of the petitioners is that the Kaliyaganj Municipality has forcefully demolished their shop rooms, three in number, lying and situated at R.S. Plot Nos. 1340 and 1341, L.R. Plot No.2400, Khatian No.2251, J.L. No.102, Mouza-Chirail, Police Station- Kaliyaganj, District-Uttar Dinajpur under Ward No.1 of Kaliyaganj Municipality, Holding No.138, N.S. Road.

According to the petitioners, the aforesaid plot of land lies in the northern side of the N.S. Road and there were three road facing shop rooms over the said plot of land. There were enough excess land between the shop rooms and the road in front. The men and agents of the Kaliyaganj Municipality started construction of a pucca high drain beside the northern

side of the N.S. Road and even though there was excess land in front of the shop rooms the men and agents of the Kaliyaganj Municipality forcefully extended the said drain in the land of the petitioners by demolishing the shop rooms standing thereon.

The objection raised by the petitioners against such illegal act remains unheeded.

The petitioners relies upon a communication dated 11<sup>th</sup> September, 2019 made by the Block Land and Land Reforms Officer, Kaliyaganj, Uttar Dinajpur to the Block Development Officer, Kaliyaganj, Uttar Dinajpur wherein it has been mentioned that the Revenue Inspector along with the Amin visited the plot for physical measurement and on enquiry, it was found that the ongoing construction of drain of the Kaliyaganj Municipality has entered four feet into the plot of the petitioners, due to which the petitioners have lost 52 sq. feet of land.

The learned Advocate appearing on behalf of the Kaliyaganj Municipality submits that the land in question has not been acquired by the Municipality and only relying upon a communication from the Kaliyaganj Babsayee Samiti the aforesaid plot of land has been used for the purpose of construction of the drain. The Municipality does not, however, deny the

ownership of the petitioners in respect of the land in question.

It is settled law that a public authority can utilise the land of a private person only upon acquiring the same in accordance with the provisions of law. Until and unless the same is acquired the authority cannot forcefully encroach upon and take away the possession thereof.

In the instant case by the illegal act of the Kaliyaganj Municipality the petitioners have lost their livelihood as the shop rooms from where they were earning have been demolished by the Municipality without any authority of law. The action of the Municipality speaks to sheer high handedness which is required to be stopped immediately.

In view of the above the respondent No.2 being the District Magistrate, Uttar Dinajpur is directed to take necessary steps in response to the complaint filed by the petitioners and ensure that either the shop rooms of the petitioners are returned back to them in their previous position prior to the demolition or to acquire the land of the petitioners in accordance with law and pay the necessary compensation for the same. The loss and damages suffered by the petitioners on account of the demolition of their shop rooms and the loss of earning shall also be taken into consideration

by the aforesaid respondent at the time of considering the case of the petitioners.

Steps shall be taken by the aforesaid respondent strictly in accordance with law, at the earliest, but positively within a period of six months from the date of communication of a copy of this order.

The petitioner is directed to forward a copy of the writ petition along with all annexures and other supporting documents to the aforesaid respondent at the time of communicating the order of the Court.

WPA 9948 of 2020 is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

**(Amrita Sinha, J.)**