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09.02.2022
TN

WPA No.2053 of 2022

Golam Murtoza
Vs.
The State of West Bengal and others

(Via Video Conference)

Mr. Robiul Islam,
Mr. Raju Mondal

.... for the petitioner

Mr. Jahar Lal De,
Mr. Srikanta Paul

.... for the State

Affidavit-of-service filed in court today be kept
on record.

Learned counsel for the petitioner submits that
although the respondent no.11 is encroaching upon a
Government land adjacent to the petitioner's
premises, the respondent-authorities are not taking
any action for eviction of the said private respondent
despite a representation made by the petitioner.

Learned counsel appearing for the State-
respondents submits that the petitioner himself had
not given any representation. Moreover, the property,
in which the encroachment is allegedly made, even as

per the averments made in paragraph no.10 of the writ petition, has vested in a Panchayat. By placing Sections 25 and 42 of the West Bengal Panchayat Act, 1973, learned counsel for the State iterates that it is for the Panchayat authorities to take steps, if at all, and the provisions of the Public Land (Eviction of Unauthorised Occupants) Act, 1962 (for short “the 1962 Act”) are not attracted.

However, learned counsel for the petitioner submits that the land-in-question, where the respondent no.11 has encroached, has been mentioned in several other paragraphs of the writ petition, including paragraph nos. 3 and 4 thereof, as a Government land. It is only an inadvertent error due to which it was pleaded in paragraph no.10 of the writ petition that it is a Panchayat land.

Be that as it may, even if there is any dispute as to who is the owner of the land – the Panchayat or the Government or any instrumentality of the Government - it would be appropriate if the Executive Engineer (Road), Murshidabad Zilla Parisad, ascertains the ownership of the land and, in the event it is found that it is a Government land and the provisions of the 1962 Act are applicable, take appropriate steps for initiation of proceedings against the respondent no.11,

if the latter is found to be in unlawful encroachment of the Government land.

For the purpose of the litigation, the representation annexed at page – 13, which was written by a learned Advocate but at the behest of the petitioner is deemed as sufficient representation for the Executive Engineer to so consider.

Accordingly, WPA No.2053 of 2022 is disposed of by directing the respondent no.5, the Executive Engineer (Road), Murshidabad Zilla Parisad to consider and dispose of the representation given on behalf of the petitioner, annexed at page – 13 of the writ petition, upon giving adequate opportunity of hearing to the petitioner and all other interested parties, preferably within three weeks from date, and decide the questions of ownership of the plot of land allegedly encroached by the respondent no.11 and as to whether any such encroachment has actually been made by the respondent no.11, in the event the land is found to be a Government land.

It is expected that the decision of the Executive Engineer (Road) shall be communicated to the interested parties, in particular the petitioner, at the earliest after three weeks.

It is made clear that this court has not gone into the merits of the respective contentions of any of the parties herein.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)