

23rd February,
2022
(AK)
04

WPA 3042 of 2022

(Via Video Conference)

Mohammad Azad
Vs.
Union of India and others

Mr. Madhab Kumar Ray Chaudhury
...for the petitioner.

Mr. Brijesh Kr. Singh
...for the respondent no.4.

The petitioner challenges an order of eviction passed against the petitioner by the respondent authorities under Section 5 of the West Bengal Public Premises (Eviction of unauthorized occupants) Act, 1971.

Learned counsel for the petitioner contends that, without giving appropriate opportunity of hearing to the petitioner and despite the subsistence of a trade license issued by the respondents themselves, the notice under Section 4 and subsequent proceedings under Section 5 of the 1971 Act were undertaken.

Learned counsel appearing for the respondents submits that there is no legal impediment in passing an order of eviction under Section 5 of the 1971 Act despite the subsistence of a trade license.

Moreover, learned counsel controverts the contention of the petitioner that no opportunity of hearing was given to the petitioner.

Be that as it may, since the 1971 Act, under Section 9 thereof, specifically provides for a more efficacious remedy of appeal than a writ petition, it would not be prudent to interfere at this stage under Article 226 of the Constitution of India, more so because the remedy of appeal available to the petitioner is evidently more efficacious, since the appellate court/forum can enter into factual as well as legal questions, whereas the writ jurisdiction is restricted by certain parameters as are well-established by several judgments of this court and the Supreme Court.

In such view of the matter, WPA 3042 of 2022 is disposed of with liberty to the petitioner to approach the appellate forum with an appeal under Section 9 of the West Bengal Public Premises (Eviction of Unauthorized Occupants) Act, 1971 within a week from date.

If so approached, the appellate authority shall decide the same in accordance with law and upon giving adequate opportunity of hearing to all the concerned parties without being influenced in any manner by any of the observations made herein.

For further clarification, the merits of the respective contentions of the parties in connection with the

proceeding under Section 5 of the 1971 Act have not been gone into by this court at all.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)