

AD. 14.
April 28, 2022.
MNS.

WPA No. 5775 of 2022

Basanta Kumar Karan
Vs.
The State of West Bengal and others

Mr. Manoranjan Jana,
Ms. Mitali Jana

...for the petitioner.

Mr. Arum Kumar Roy,
Mr. Somenath Ghosh

...for the State.

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

At the outset, a preliminary objection has been
raised by learned counsel appearing for the State-
respondent with regard to the maintainability of the
writ petition.

It is submitted that under Section 4 of the
West Bengal Public Land (Eviction of Unauthorised
Occupants) Act, 1962 (1962 Act), the concerned
Collector, and not the present respondents, is the
appropriate authority having power regarding order of
eviction of a person in unauthorised occupation from
public land.

Learned counsel for the petitioner contends
that the scope of the instant writ petition is otherwise.
It is submitted that despite several representations by
the petitioner, the respondent authorities have failed

to take any step regarding encroachment of a Public Works Department (PWD) land. Learned counsel for the petitioner further contends that since the Executive Engineer (PWD) (Roads), Tamluk Highway Division (Roads), who has been arrayed as respondent no. 3 herein, was also a part of the proceeding and the communication between the authorities with regard to the petitioner's complaint, action ought to have been taken under the Highways Act.

However, as rightly submitted by learned counsel appearing for the respondent authorities, the writ petition itself contains several pleadings, which indicate that the PWD, that is, the Public Works Department (Roads) is the owner of the land. In paragraph 6 of the writ petition it has been boldly claimed by the petitioner that it is within the full knowledge of the respondent authorities that the private respondents are encroaching upon a Government, PWD (Roads) land "unauthorisedly".

The reliefs claim in the present writ petition in respect of proposed removal of all obstructions and encroachments from the purported PWD land, is beyond the authority of the respondents in the present writ petition to grant.

The contention of the respondent authorities is much more acceptable inasmuch as Section 4 of the 1962 Act is clearly applicable to the present case

even as per the petitioner's own pleadings in the writ petition, and the said provision empowers the Collector to take steps under the 1962 Act for eviction of persons in unauthorised occupation of a public land.

Section 2(7) of the 1962 Act clearly defines "public land" to include any land belonging to the State Government and/or a local authority. Since the PWD operates under the control of the State Government, the land allegedly owned by such authority is undoubtedly a "public land" as envisaged in the 1962 Act.

Hence, the writ petition is not maintainable in law and in its present form.

WPA No. 5775 of 2022 is disposed of by granting liberty to the petitioner to approach the concerned Collector for taking steps within the contemplation of Section 4 of the 1962 Act. If so approached, the said authority shall look into the matter in accordance with law and, upon adhering to due process of law, take steps accordingly.

This Court has not gone into the merits of the contentions of the parties and it will be open to the Collector to consider all aspects which are relevant for taking the above-indicated steps.

Since the court did not call for the respondents to use any affidavit-in-opposition, it is deemed that

the allegations made in the instant writ petition are not admitted by the respondents.

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.)