

AD. 9.
May 19, 2022.
MNS.

WPA No. 7363 of 2022

Rahidul Sk. and others
Vs.
The State of West Bengal and others

Mr. Rwitendra Banerjee,
Mr. Shibasis Chatterjee,
Mr. Devdutta Pathak

...for the petitioners.

Mr. Soumitra Mukherjee,
Mr. Rajat Dutta

...for the State.

Mr. Prosenjit Mukherjee,
Mr. Aslam Parvez,
Mr. Arghya Kamal Dash

...for the respondent nos. 7 to 11.

Learned counsel for the petitioners contends that, despite the Prodhan of the local Gram Panchayat having written to the Executive Magistrate, Domkal, in respect of the unauthorised construction being made by the private respondents, no action has yet been taken by the Executive Magistrate, who also acts as the Collector under the West Bengal Public Land (Eviction of Unauthorised Occupants), Act, 1962 (1962 Act), for removal of the encroachment and/or eviction of the private respondents from such unauthorised occupation.

Learned counsel appearing for the private respondents as well as his counterpart appearing for the State contend that the West Bengal Panchayat

Act, 1973 (Act of 1973) operates in the field and governs lands belonging to the Panchayat. In view of Section 25, sub-sections (2) and (3) of the said Act giving ample power to the Gram Panchayat to remove the obstruction or encroachment, upon taking steps pursuant to Section 25, the action sought by the petitioner under the 1962 Act is not maintainable in law.

That apart, learned counsel for the private respondents submits that, on merits, the private respondents are not in unauthorised occupation in the premises.

In reply, learned counsel for the petitioners reiterates that the Act of 1973 contains no specific provision akin to the procedure of eviction as contemplated in Sections 3 and 4 of the 1962 Act and, as such, since Section 2(7) of the 1962 Act clearly includes lands belonging to a local authority, the Collector ought to have taken action in terms of Sections 3 and 4 of the 1962 Act.

A perusal of Section 25, sub-sections (2) and (3) of the Act of 1973 reveals that a Gram Panchayat may, by a notice in writing, require any person, who has caused obstruction or encroachment on or damage to any public street or drain or other property under the control and management of the said Gram Panchayat, remove such obstruction or encroachment or repair such damage, as the case

may be, within the time to be specified in the notice. If such obstruction or encroachment is not removed or damage is not repaired within the time so specified, the Gram Panchayat may cause such obstruction or encroachment to be removed as per the provisions of sub-sections (2) and (3) of Section 25 of the Act of 1973.

The Act of 1973 being a special statute governing Panchayat lands, and in view of the petitioners having specifically admitted in paragraph 2a of the writ petition that the land-in-question is under the control and management of the Gram Panchayat, the objection taken by the respondents is upheld, to the effect that in view of adequate provision of eviction provided under Section 25(2) and (3) of the Act of 1973, there arises no question of the Controller taking any action under the 1962 Act. As regards the argument of the petitioners that sub-sections (2) to (4) of Section 25 of the Act of 1973 have to be read in conjunction with sub-section (1) of Section 25, such argument cannot be accepted, since the language of the said sub-section reveals unambiguously that the powers of the Gram Panchayat in sub-section (1) and sub-sections (2) to (4) are independent of each other. Hence, the powers of the Gram Panchayat to remove unauthorised encroachment under sub-sections (2) to (4) of Section 25 need not be restricted to streets

and waterways within the jurisdiction of the Panchayat (other than canals) only, but also apply to “other property” than a public street or drain, in terms of the language of Section 25(2) of the Act of 1973. Moreover, the report indicated at page 30 of the writ petition, given by the Prodhan of the local Panchayat to the Executive Magistrate was given under the purview of Section 133 of the Code of Criminal Procedure. The writ petitioners do not have any *locus standi* to rely on or seek action in terms of the said provision.

Hence, the prayer as made in writ petition cannot be allowed.

Accordingly, WPA No. 7363 of 2022 is disposed of by giving the petitioners the liberty to take appropriate action, if available to the petitioners under any governing statute, which is applicable to the land-in-question, for eviction of the private respondents.

It is made clear that the rights and contentions of the petitioners and the private respondents in respect of the land-in-question and regarding initiation of any proceeding have not been gone into by this Court and it will be open to the parties to urge all such questions before an appropriate authority.

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.)