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04.05.2022
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WPA No.7436 of 2022

Jirat Bandhu Milan Sangha Club
Vs.
The State of West Bengal and others

Mr. Prantick Ghosh,
Mr. Siddhartha Sarkar
.... for the petitioner

Mr. Lalit Mohan Mahata,
Mr. Prasanta Behari Mahata
.... for the State

Mr. Manas Kumar Das
.... for the respondent no.7

Leave is granted on the prayer of learned counsel for the petitioner to file affidavit-of-service during the course of the day.

The present challenge has been preferred against an order of the District Magistrate, acting as the appellate authority under the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 (for brevity the “1962 Act”). By the impugned order, the District Magistrate affirmed the order of eviction of the writ petitioner from the disputed property on the ground that the petitioner had obtained a lease from the local Panchayat without the Panchayat having

taken prior approval from the State under Section 41 of the Panchayat Act, 1973 (for brevity “the 1973 Act”).

Learned counsel appearing for the petitioner submits that since the Panchayat had vested the right on the petitioner-Society to take possession of the property and to make construction in accordance with the lease deed, the possession of the petitioner is legal and could not be termed as ‘unauthorised occupation’ in respect of the land-in-question.

Learned counsel appearing for the State controverts such contentions and submits that it has been categorically held by the appellate forum as well as the first forum that the lease-in-question was given apparently without any prior approval under Section 41 of the 1973 Act.

Learned counsel appearing for the Panchayat pleads ignorance in respect of any approval having been taken from the State prior to grant of the lease to the petitioner-Society.

From the submissions of learned counsel for the parties as well as the materials annexed to the writ petition, not an iota of paper is seen to indicate that a permission was taken at any point of time from the State within the contemplation of Section 41 of the

1973 Act for the purpose of granting the purported lease in favour of the petitioner by the Panchayat.

Hence, in view of both the forums below having specifically found regarding absence of such prior approval, there is no scope of interference with the said concurrent factual findings under Article 226 of the Constitution of India.

In the absence of any illegality and/or irregularity, the District Magistrate acted well within his jurisdiction in confirming the order of eviction of the writ petitioner. If the petitioner makes the allegation that the Panchayat did not disclose such facts to the petitioner while granting the lease, it is for the petitioner to approach the appropriate forum for adequate relief against the Panchayat in that regard. However, the State-respondent cannot be faulted in any manner for having proceeded under the 1962 Act against the petitioner, in view of a previous direction in that regard being passed by a coordinate Bench of this court dated March 25, 2021 in WPA 5885 of 2021.

WPA No.7436 of 2022 is accordingly dismissed.

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.)