

AD. 13.
June 22, 2022.
MNS.

WPA No. 10857 of 2022

Himangsu Sekhar Matia and another
Vs.
The State of West Bengal and others

Mr. U. K. Jana,
Mr. Arup Kumar Chakraborty

...for the petitioners.

Ms.Manika Roy

...for the respondent no. 8.

On the undertaking of learned counsel for the petitioners that an appropriate affidavit-of-service will be filed during the course of the day, the matter is taken up for hearing with the understanding that the learned Advocate-on-record of the petitioners shall positively file the affidavit-of-service during the course of the day.

Despite service, none appears for the respondent authorities, although the respondent no. 8 is represented through counsel.

The contention of the petitioners is that the respondent authorities, at the behest of the private respondent, passed an order of eviction against the petitioners without granting adequate notice of the actual time of the hearing. Although it was mentioned in the notice that hearing of the matter would be taken up at around 2 p.m., it was actually taken up at

around 12 noon as per the petitioners. As such, the petitioners had to take out a time petition. However, disregarding the same, the impugned order was passed.

Learned counsel for the private respondent controverts such submission and argues that the order was passed in due course of law. It is further submitted that the impugned order is appealable under Section 10(4) of the Highways Act, 1964.

Upon hearing learned counsel for the parties, it is evident that there is nothing on record to substantiate the allegation against the petitioners that the petitioners' matter was taken up before time. Moreover, the factum of the petitioners having filed a time petition when the matter was taken up for hearing, is itself an indicator that the allegation may not be correct.

Be that as it may, since the order was passed under the 1964 Act, pursuant to a previous direction dated May 11, 2022 of this Court in WPA 6765 of 2022, wherein it was found that the mention of Section 1 of the Public Premises (Eviction of Unauthorized Occupants) Act in the preceding notice was superfluous and a notice under Section 10(1) of the West Bengal Highways Act, 1964 had been given to the petitioners, there is no scope of this court interfering with the order under Article 226 of the Constitution of India.

In any event, since a challenge is maintainable under Section 10(4) of the 1964 Act against the order of eviction under the said Act, this Court chooses to opt for a self-imposed restriction and abstain from entertaining the writ petition on merit.

Hence, WPA 10857 of 2022 is disposed of with liberty to the petitioners to prefer a challenge against the impugned order before the appropriate forum, if the petitioners so wish.

If such a challenge is preferred, the appellate authority shall decide the same upon adequate hearing being given to all concerned, in accordance with law, without being influenced in any manner by any of the observations made 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.)