

24.08.2022
Court No.32
rpan / 02-3

F.M.A. 606 of 2021
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CAN 1 of 2022
Chandra Nath Koley *alias* Bhola
- Versus -
State of West Bengal & ors.
with
WPA 19463 of 2017

Mr. Rwitendra Banerjee,
Mr. Sandip Kundu,
Mr. Devdutta Pathak
... for the Appellant.
Mr. Samrat Sen, Ld. AAAG
Mr. Amitava Mitra
...for the State.
Mr. Basudeb Gayen
... for the Respondent no.6.
Mr. Uday Narayan Betal,
Mr. Dibyendu Koley
...for the respondent nos. 8 & 9.

The present appeal has been preferred challenging an order dated 16th August, 2018 passed in a writ petition, being W. P. 19463(W) of 2017 [newly numbered as WPA 19463 of 2017].

Mr. Banerjee, learned advocate appearing for the appellant submits that in spite of arriving at a finding that Modern Athletic Club and one Smt. Suma Dey had been evicted from the Government vested land, the learned single Judge did not issue any order towards demolition of the unauthorised construction, which is existing on the concerned plot of land, being L. R. Plot no.6035 of Mouza – Sheoraphuli, J. L. No.06 under L.R.

Khatian No.01 (in short, the said plot) since the P.W.D. (Civil) was not a party to the writ petition.

Drawing our attention to the provisions of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 [in short, said Act of 1962], Mr. Banerjee submits that steps for removal of such unauthorised construction is required to be taken by the Collector and that P.W.D. (Civil) has no role to play.

Mr. Betal, learned advocate appearing for the respondent nos.8 and 9, however, submits that the said respondents have already preferred a statutory appeal against the order dated 18th December, 2017 passed by the Sub-Divisional Magistrate, Serampore, Hooghly in Eviction Case no.01 of 2008 and the same is still pending before the competent authority.

Mr. Sen, learned Assistant Additional Advocate General, appearing for the State respondents submits that a statutory appeal has been preferred by the respondent no.8 and 9 but no order has yet been passed in the same.

It appears that the Eviction Case no.01 of 2008 was initiated on the basis of a complaint lodged by the respondent no.5. The complaint had been finally disposed of by an order dated 18th December, 2017. The operative part of the order runs as follows:

‘As per report dated 27.11.2017 of B.L&L.R.O, Serampore-Uttarpara, it is clear that the Modern Athletic Club have encroached upon

Govt. Vested land at R.S. Plot No.3080, correspondent to L.R Plot No.6035 of Mouza–Seoraphully, J.L. No. 6, Dist. Hooghly by constructing a permanent structure covering an area 0.016 acres (approx.) Satak and Suma Dey wife of Arun Kumar Dey encroached 0.003 acres (approx.) of land, R.S. Plot No. 3080, L.R Plot No.6035 of Mouza–Seoraphully, J.L. No.06.

In view of the above you are therefore directed to vacate the public land as per Sec 4(1) of Public Land (Eviction of Unauthorised Occupants) 1972 within 15 days from the date of received of the notice failing which legal action will be taken against you as per Provision of Law.'

Surprisingly, thereafter no steps were taken by the competent authority for removal of the structures from the said plot in exercise of the power conferred by the said Act of 1962.

Section 6A of the said Act of 1962 runs as follows:

'6A. (1) Where any person has been evicted from any public land under section 4, the Collector may, after giving fourteen days' notice to the person from whom possession of the land has been taken, remove or cause to be removed or dispose of by public auction any property remaining on such land.

(2) Where any property is sold under sub-section (1), the sale proceeds thereof shall, after deducting the expenses of the sale and the amount, if any, due to the Collector or to the owner of the public land on account of arrears of rent or damages or costs, be paid to such person as may appear to the collector to be entitled to the same.'

There is no material on record to infer that it is incumbent upon the PWD (Civil) to take steps for removal of the structures from the said plot from which the unauthorised occupants have been evicted.

In view thereof, the order impugned in the present appeal is modified and the State authorities are directed to take appropriate steps for removal of the unauthorised structures as existing on the said plot within a period of four weeks from the date of communication of this order, subject to any order that may be passed by the competent authority in the appeal preferred by the respondent nos.8 and 9.

Accordingly, the appeal, being F.M.A. 606 of 2021 and the connection application, being IA No.1 of 2022, are disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)