

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri**

09.09.22
Sl-01
Ct.32
(S.R.)

**MAT 73 of 2022
with
IA No.1 of 2022
Ajit Kumar Agarwala & Anr.**

v.

**The State of West Bengal & Ors.
(via video conference)**

Mr. Kishore Dutta, Sr. Adv.
Mr. Sagar Bandyopadhyay
Mr. Niladri Banerjee
Mr. Deepankar Thakur ... for the appellants.

Mr. Bikramaditya Ghosh
Mr. Subir Kr. Saha
Mr. S.N. Ghosh ... for the State.

Mr. Kunaljit Bhattacharjee
Ms. A Raw

... for the respondent nos.8 to 29,
31, 33 to 36, 38, 39 and 41 to 51.

The scope of the present appeal is limited to the issue as to whether on the basis of the fact situation as existing on 24th August, 2022, the direction upon the Administration to demolish the concrete building existing at one end of the Lebong Cart Road, is sustainable in law.

Initially by an order dated 10th August, 2022 the police authorities and the District Magistrate were directed to ascertain as to who had blocked the concerned roads. In the said order It was further directed that if the roads had been blocked by the tea estate the same should be removed by 24 hours. Pursuant to such direction the State authorities conducted an inspection and a report

was prepared by the Sub-Divisional Officer, Sadar, Darjeeling. Upon placement of such report, the learned Single Judge by an order dated 24th August, 2022 directed the Administration to demolish the building/structure by 24 hours.

Mr. Dutta, learned senior advocate appearing for the appellants has advanced three arguments. His first argument is that the land on which the building/structure is existing is a land leased to the appellants and as such no direction could have been issued for demolition of a structure existing over the said land. His next argument is that the writ petition was preferred, *inter alia*, praying for issuance of necessary direction towards cancellation of the trade licences issued by the respondent no.6 to the respondent nos.8 to 15. The order of demolition is thus beyond the scope of the writ petition. His third argument is that to resolve the issue finally, the appellants have already given a proposal towards construction of an alternative road and the appellants are ready and willing to construct the said alternative road under the supervision of the State authorities.

When the matter was heard by this Court on 24th August, 2022 the State authorities were directed to conclude the technical assessment as referred in the order dated 13th August, 2022 and to file a report before

this Court. Pursuant to such direction a compliance report of the District Magistrate, Darjeeling has been placed before us by Mr. Ghosh, learned advocate appearing for the State respondents. Let the report, as produced, be kept on record.

Mr. Bhattacharjee, learned advocate appearing for the private respondents has, however, submitted that the said respondents were not granted any opportunity of hearing prior to identification and technical assessment of the appellants' proposal for alternative road.

In the report of the District Magistrate, Darjeeling dated 2nd September, 2022, it has, *inter alia*, been observed that the appellants' proposal towards construction of an alternative road was assessed and found to be feasible subject to the conditions as incorporated in the memo dated 1st September, 2022 issued by the Executing Engineer, PWD Darjeeling Division.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

In the report dated 13th August, 2022, the Sub-Divisional Officer, Sadar, Darjeeling has observed, *inter alia*, that two pathways stand blocked by an incomplete three storied building and that the said building/structure falls within the land leased to the Terai Resort & Country Club Pvt. Ltd. for tea tourism project. A

perusal of the order passed by the learned Single Judge on 24th August, 2022 does not reflect that the said observations were taken into consideration. The order does not disclose the reasons for which the ultimate decision towards demolition of the structure was issued. By the said order, the learned Single Judge though granted an opportunity to the appellants to file a formal objection to the report but observed that the order of demolition shall be complied with within 24 hours. On the basis of the fact situation as existing on 24th August, 2022, the learned Single Judge ought not to have taken the final decision to demolish the building.

In view thereof, the order passed by the learned Single Judge directing the Administration to demolish the concrete building is set aside.

The proposal for an alternative road, as submitted on behalf of the appellants, was considered by the State authorities and upon technical assessment, the appellants' proposal for alternative road was found to be feasible subject to compliance of certain terms as contained in the memo dated 1st September, 2022 issued by the Executing Engineer, PWD, Darjeeling Division. It has been submitted on behalf of the appellants that they are ready and willing to construct the said alternative road under the supervision of the State authorities.

The writ petition has not yet been finally disposed of

and the above issues, as urged, need to be finally decided by the learned Single Judge. The appellants would also be at liberty to file an exception to the report filed by the Sub-Divisional Officer, Sadar, Darjeeling on 13th August, 2022.

With the above observations and directions, the appeal and the connected application are disposed of.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)