

10.10.2023
Ct. 654
D/L 1
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WPA 1001 of 2023

Md. Shah Hossain

-Vs-

The State of West Bengal & Ors.

Mr. Tapas Kumar Majumder,
Mr. Pratha Pratim Bhattacharjee

... for the petitioner

Mr. Chandi Charan De,
Mr. Anirban Sarkar

... for the State

Mr. Debasish Das

... for the respondent no. 6

Supplementary affidavit filed on behalf of the petitioner is taken on record.

This writ petition has been filed under Article 226 of the Constitution of India for setting aside the notice issued by the respondent no. 3 *vide* Memo No. 305 dated 6th May, 2022.

The dispute relates to encroachment on the Government land. By order dated 29th August, 2022 passed in *WPA 15167 of 2022 (Himadri Sekhar Dey versus The State of West Bengal & Ors.)* with *WPA 9779 of 2022 (Md. Shah Hossain versus The State of W.B & Ors.)*, this Court directed the respondent no. 3 of this writ petition to conclude the proceedings under Section 10 of the Act of 1964 within two months from the date of communication of the order after affording

reasonable opportunity of hearing to all the interested parties including the petitioner and the private respondents, in accordance with law. Pursuant to such direction, an enquiry was held and it is reported by the Block Land & Land Reforms Officer, Mayureswar-II *vide* Memo No. 985/BL&LRO, Mayureswar-II/2022 dated 22nd December, 2022 that the land belongs to the Collector, Birbhum. On such ground, the writ application is pursued for setting aside the notice dated 6th May, 2022 of Assistant Engineer, PWD, Suri Sub-Division.

The learned advocates for the respective parties submit that since the land belongs to the Collector, Birbhum, the provision of West Bengal Highways Act, 1964 is not applicable, rather the provision of West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962 is applicable.

Upon perusal of the letter under Memo No. 985/BL&LRO, Mayureswar-II/2022 dated 22nd December, 2022 (Annexure-F) furnished with affidavit-in-opposition, it is found that the Block Land & Land Reforms Officer, Mayureswar-II, Birbhum made a measurement cum demarcation on government land being Plot. No. 132/2216 pursuant to order passed in WPA 15167 of 2022. Upon conducting such measurement cum demarcation, it is reported that the land in question measuring 1.13 acre is recorded in favour of Collector and structures A, B & C which are

indicated in the map annexed to the letter has been constructed by one Md. Shah Hossain (petitioner herein). Be that as it may, since the land in question belongs to the Collector, hence the provision of West Bengal Highways Act, 1964 is not applicable. Therefore, the notice dated 6th May, 2022 for removal of unauthorized occupation under Section 10 of the West Bengal Highways Act, 1964 issued by the respondent no. 3, Assistant Engineer (PWD), Suri Sub-Division is not sustainable.

However, bearing in mind the conspectus of facts emerging from the aforesaid letter under Memo No. 985/BL&LRO, Mayureswar-II/2022 dated 22nd December, 2022 (Annexure-F), respondent no. 6 is granted liberty to make representation under the provision of West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962 within a month from the date of communication of this order before the competent authority to act in accordance with law. In the event such representation is made, the competent authority shall consider such representation and dispose of the same by passing a reasoned order within a period of two months from the date of such representation after hearing all the interested parties and shall communicate the same to the parties within a week thereafter.

With the aforesaid observations, the writ petition being **WPA 1001 of 2023** stands disposed of.

All connected applications, if any, stand disposed of.

Interim order if any, stands disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary legal formalities.

(**Bivas Pattanayak, J.**)