

16.05.2023
Ct. 5
D/L 29
ab

WPA 1609 of 2023

Nepal Maity & Ors.

-Vs-

State of West Bengal & Ors.

Mr. Golam Mastafa,
Mr. T. S. Samanta

... for the petitioners

Mr. Amal Kr. Sen,
Mr. Jaladhi Das

... for the State

Mr. Uttam Kr. Bhattacharyya

... for the respondent nos. 3 & 4

Mr. Salil Kumar Maiti

... for the respondent no. 10

1. The impugned order in the present writ petition is dated 28th December, 2022 and passed by the District Magistrate, Purba Medinipur. By the impugned order, the District Magistrate has directed the Sub-Divisional Officer, Haldia to take all necessary measures to remove all the encroachments over the Government land, as the land has not been given on lease under the provisions of The West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962.

2. Upon considering the submissions made on behalf of the parties and particularly by counsel appearing for the State respondents, it appears that the impugned order was passed in disregard of compliance of Section 3(1) of the 1962 Act under which, the Collector is required to form an opinion on information received that the public land is in the unauthorized occupation of any person. The Collector shall thereafter issue a notice calling upon all persons concerned to show cause within such date as may be specified in the notice as to why an order under Section 4(1) shall not be made and shall serve the notice in the manner referred to under Section 3(2) of the Act.
3. Section 4(1) comes at the stage after the cause shown by the person, on who the notice is served, is considered by the Collector and after an inquiry is made, if the Collector shall deem fit. On the Collector being satisfied that no bona fide dispute regarding title to the public land exists and the public land is indeed in unauthorized occupation of the person concerned, the Collector is empowered to pass an order directing the person concerned to vacate the public land and deliver possession thereof to the owner.
4. Eviction of the person in unauthorized occupation is contemplated under Section 5(1) of the Act and the

Collector is also empowered to take possession of the public land by evicting the person concerned.

5. The impugned order in the present case does not indicate whether the procedure under Sections 3(1) and 4(1) of the Act was followed. The District Magistrate has straightaway ordered to remove all the encroachments without following the statutory mandate under the 1962 Act.
6. The impugned order dated 28th December, 2022 is quashed for the above reasons. The Authority concerned shall not be precluded from taking steps in accordance with law as provided under the 1962 Act.
7. WPA 1609 of 2023 is disposed of in terms of the above.

(Moushumi Bhattacharya, J.)