

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 7184 of 2023

Yusuf Seikh

Vs.

State of West Bengal & Ors.

For the Petitioner : Mr. Balai Lal Sahoo
Md. Hasanuz Zaman
Md. Zeeshanuz Zaman

For the Zilla Parishad : Mr. Tapash Kr. Mondal

For the State : Mr. Chandi Charan De
Mr. Anirban Sarkar
Mr. Ram Chandra Guchhait

Heard on : 04.05.2023

Judgment on : 04.05.2023

Jay Sengupta, J.:

This is an application under Article 226 of the Constitution of India thereby praying for direction upon the respondents, particularly the District Magistrate and Collector of 24 Parganas to stay the extension of interim order/final order passed in appeal case no. 3/eviction/HW/District Magistrate/South 24 Parganas of 2022-2023, to recall the impugned order dated 17.02.2023 and to grant long term settlement to the petitioner in connection with 96 sq. ft. of land on Dag No. 2603/3276 under Mouza Bisweswarpur, JL No. 163, Police Station Magrahat, South 24 Parganas.

Affidavit of service filed on behalf of the petitioner is taken on record.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is the owner of a tea stall on a small piece of land being plot no. 2603/3276. In fact, he purchased the adjacent land in plot No. 2548. He is running the business for about 33 years and has been paying taxes after obtaining trade license. He prayed for a long term settlement of the land before the respondent authorities. A writ petition had to be filed relation to the grant of electricity connection, which was allowed. Another writ petition was filed as regards the question for long term settlement. Since no interim order was granted, an appeal was preferred. The Hon'ble Appellate Court directed the concerned authority to consider the question of long term settlement of the land. However, in the meantime, a proceeding was started under Section 10(3) of the West Bengal Highways Act. The petitioner, after the impugned order was passed directing eviction, preferred an appeal under Section 10(4) of the Highways Act. But, the fate of the same has not been intimated to the petitioner. In fact, a notice has been served that he would be evicted on 10th May, 2023. On merits, so far as the impugned order is concerned, the provision of Rule 238 of the West Bengal Land and Land Reforms Manual, 1991 was not considered by the respondent authority while passing the impugned order regarding the settlement of land. The said Rule

provides for settlement with unauthorized occupants and there is specific provision relating to holding on possession for more than 12 years, which would cover the petitioner's case. However, the Zilla Parishad has also claimed the land to be theirs. In such event, the proceeding under Highways Act would go and in fact, under Section 175 of the Panchayat Act there is a provision for similar relief for the petitioner.

Learned counsel appearing on behalf of the Zilla Parishad submits as follows. In 2017, the Zilla Parishad had handed over the land in question to the PWD. So, there is no question of Panchayat Act operating on this issue anymore. Learned counsel supports the impugned order and submits that the petitioner could not show any ground which would entitle him to get long term settlement.

Learned senior counsel representing the State submits as follows. It is quite clear even from the impugned order that the road is now maintained by the PWD and so there is no question of the West Bengal Highways Act not applying. However, the petitioner is indeed entitled to copy of the order passed in the appeal under Section 10(4) of the said Act.

It has been fairly submitted by the learned counsel for the State that the petitioner is indeed entitled to copy of the order passed in appeal under Section 10(4) of the West Bengal Highways Act.

Let the respondent No. 3 supply the petitioner a copy of the said order within a fortnight from this date.

It is also evident from the impugned order that the Rule 238 of the West Bengal Land Reforms Manual, 1991 was not taken into consideration by the respondent authority while passing the impugned order regarding long term settlement of land. This needs to be taken into consideration by the respondent authority. On this ground alone, the impugned order passed in this regard needs to be set aside.

Let the impugned order in this regard be set aside and the matter be remanded to respondent no. 3 for passing a fresh order after hearing the parties and taking into consideration Rule 238 of the Manual within two months from the date of communication of this order.

Till the decision is made in that proceeding, let status quo as regards the land be maintained by the parties.

With these observation the writ petition is disposed of.

Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance.

(Jay Sengupta, J.)