

10.04.2023
Court No.19
Item No.1(DL)
srm

W.P.A. No. 8422 of 2023
Biswanath Swarnakar & Anr.
Versus
The State of West Bengal & Ors.

Mr. Samik Sarkar

... for the Petitioners.

Mr. Kartick Bhattacharyya,
Mr. Subhas Chandra Dutta

... for the Respondent No.9.

The order passed by the Sub-Divisional Officer, Tehatta, Nadia, directing the petitioners to demolish the unauthorised structure on government land is the subject matter of challenge in the writ petition. Such order was passed on March 27, 2023. The petitioners were directed to remove the unauthorised construction from the land which had been recorded in favour of the District Collector, Nadia, within April 7, 2023. The Block Land and Land Reforms Officer, Karimpur-I Block, was directed to submit a report as to whether the encroachment had been removed or not. Such report was to be submitted by April 10, 2023. In case the encroachment was not removed within the time prescribed by the authority, the Block

Development Officer, Karimpur-I Development Block was directed to remove the encroachment within April 12, 2023. The Block Land and Land Reforms Officer, Karimpur-I Block and the Inspector-in-Charge, Karimpur Police Station were directed to extend cooperation.

According to the petitioners, although the Hon'ble Division Bench directed both the parties to approach the Sub-Divisional Officer with their grievances, the contention of the petitioners is that the representation filed by the petitioners, before the Sub-Divisional Officer with regard to the construction of the respondent No.9 had not been considered. Reference is made to the representation that was filed on February 21, 2023. The said representation contained allegation of encroachment of government land by the respondent No.9. According to the petitioners, substantial portion of the boundary wall of the respondent No.9 also fell within the government land.

The next contention of the petitioners is that the Sub-Divisional Officer could not have directed demolition, unless provisions of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 (hereinafter referred to as the said Act of 1962) had been followed.

Mr. Bhattacharyya, learned Advocate appearing on behalf of the respondent No.9 submits that the Sub-Divisional Officer had passed the order in compliance to a direction of the Hon'ble Division Bench. He further refers to page 92 of the writ petition and submits that the Block Development Officer had asked the petitioner No.2 to refund the first instalment, which was paid to the said petitioner for construction under the Pradhan Mantri Awas Yojana. Learned Advocate denies the allegation of encroachment over government land. He submits that the findings of the Block Development Officer would indicate that the petitioner No.2 was not authorised to construct anything under PMAY(G) scheme. The money was directed to be refunded.

A writ petition had been moved alleging inaction of the panchayat authorities. The said writ petition had been disposed of on the basis of a report filed by the authorities, *inter alia*, stating that the petitioners had been stopped by the panchayat authorities from making any construction over the government land. The right of egress and ingress of the respondent No.9 was also found to be kept open and undisturbed. The respondent No.9 preferred an appeal and the Hon'ble Division Bench granted liberty to the parties to

get their grievances adjudicated by the Sub-Divisional Officer, Tehatta Sub-Division. The Sub-Divisional Officer heard the parties and came to a finding that the petitioners had encroached the government land. Thus, the decision to remove the unauthorised structure had been passed.

The findings of the Sub-Divisional Officer only considers the representation of the respondent No.9 whereas, the contention of the petitioners with regard to the construction of a boundary wall on the government land by the respondent No.9, had not been considered.

Thus, the Court is of the view that the finding of the Sub-Divisional Officer with regard to the encroachment of a government land by the petitioners should be a, *prima facie*, finding, but steps under the said Act of 1962 should have been taken thereafter before any direction for demolition or removal of encroachment from the government land could be passed.

Secondly, the contention of the petitioners with regard to the encroachment by the respondent No.9 of government land, ought to have been decided as well. The other grievance of the petitioners with regard to non-conversion of the plot over which the respondent No.9 had made a construction, should be decided in terms of the

provisions of the West Bengal Land Reforms Act, 1955. The petitioner can approach such authority at any time.

Under such circumstances, the writ petition is disposed of upon setting aside the order dated March 27, 2023, with a further direction upon the Sub-Divisional Officer, Tehatta Sub-Division, to dispose of the allegations of both the parties with regard to the encroachment over government land, in accordance with law and in terms of the said Act of 1962. The removal of encroachment must adhere to the provisions of the said Act of 1962, and shall be followed.

The entire exercise shall be completed within a period of three months from the date of communication of this order.

The Court has not gone into the merits of the allegations and counter-allegations of the parties.

A copy of the writ petition along with a server copy of this order be served upon the Sub-Divisional Officer, Tehatta Sub-Division, District-Nadia.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)