

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

Present :-

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA

WPA 9482 of 2023

Arabinda Das & Ors.

-Versus-

State of West Bengal & Ors.

For the petitioner	:	Mr. Sudhasatva Banerjee Mr. Manish Biswas Mr. Akash Dutta Mr. Mrinal Kanti Biswas
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For the State respondents	:	Mr. Nilotpal Chatterjee Mr. Prantik Gorai
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Last heard on	:	01.05.2023.
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Delivered on	:	02.05.2023.
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Moushumi Bhattacharya, J.

1. The Order passed by this Court yesterday, i.e. on 1st May, 2023, recorded that learned counsel appearing for the petitioners intends to

argue on the point of the proposed Health Centre blocking a substantial part of the petitioners' ingress and egress to the petitioners' property. Counsel had submitted that counsel would not argue on the point of the provisions of the 1971 Act or compliance thereof by the respondents since the petitioners had already been compensated for the demolition. The point which hence remains is whether the Health Centre "*Suswastha Kendra*" proposed to be constructed by the State respondents in front of the petitioners' property can be interfered with for the reasons stated on behalf of the petitioners.

2. According to counsel appearing for the petitioners, the map enclosed with the list of documents given on behalf of the State respondents shows that the proposed construction would block 60 ft. of open land in front of the petitioners' house and only 45 ft. would be left free for the ingress and egress of the petitioners. This position needs to be revisited after the State respondents have furnished a document in Court today with a copy to the petitioners, paragraph 7 of which states that the proposed area of the Health Centre may be reduced in length from 60 ft to 50 ft. Paragraph 7 further states that if the proposed area is reduced to 50 ft. then the free space available to the petitioners would be uninterrupted and the space for ingress and egress of the petitioners would be 55 ft.

3. This Court is of the view that the respondents have taken a reasonable stand and if the proposed construction is indeed reduced to 50 ft. then 50 ft. of the petitioners' area will be blocked. The respondents have also undertaken that the Health Centre will be constructed leaving 4 ft. space from Plot No. 567 which would also assist in the petitioners' peaceful ingress and egress to Plot No. 567. Plot 567 belongs to the petitioners.
4. Apart from the reduced construction area of the Health Centre which the respondents will be directed to follow, the fact that the petitioner no. 2 sought for 15 days time to remove the encroachment on 29th March, 2023 before the SDO, Jangipur and also made a specific averment to that effect in the writ petition, persuade this Court to hold that the petitioners are not entitled to any further relief. As stated earlier, the petitioners have already received compensation of Rs. 80,000/- from the State respondents.
5. The contention raised on behalf of the petitioners that the State can look at other plots of land with a bigger area coverage without any objection loses relevance in the light of the view expressed by the Court in the above paragraphs. The contention becomes further irrelevant having regard to the fact that the Health Centre has been running from rented premises belonging to the petitioners' father and the petitioners' father has been enjoying the rent from the said premises since 2012.

6. Section 94(iii)(a) of The West Bengal Panchayat Act, 1973 provides that members of the House of the People and the Legislative Assembly of the State elected thereto from a constituency shall be a part of the Panchayat Samiti of the concerned Block. Section 119 of the 1973 Act provides for the constitution of the Panchayat Samity. Sections 110 and 111 authorize the State Government to place any property under the control and management of the Panchayat Samity, including any road vested in the State Government and further that the Panchayat Samity may transfer to the State Government or the Zilla Parishad any road or part of a road which is under the control or management of the Samity to the State Government on such terms and conditions as may be agreed upon.
7. On considering the above provisions, the Notice referred to in the order dated 20th April, 2023, calling upon the political functionaries of the locality to be present during the act of demolition dilutes the finding of “*malice in law*” on the part of the respondents. The findings recorded in the said order to the extent of the respondents’ subverting the procedure under The West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962 are modified to that extent.
8. Nothing further remains to be decided in the writ petition. The petitioners have been compensated and can have no further objection to the proposed construction of the Health Centre in Plot No. 852.

The injunction on the State respondents is accordingly vacated and WPA 9482 of 2023 is disposed of in terms of the above.

9. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)

SM.