

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 12366 of 2023

Sri Uttam Kumar Jana & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Surojit Samanta,

Mr. Balai Lal Sahoo

...for the petitioners

Mr. Jayanta Samanta,

Mr. Parikshit Goswami

...for the State

Mr. Srijan Nayak,

Ms. Rituparna Maitra

...for the WBSEDCL

1. A report filed by the WBSEDCL (West Bengal State Electricity Distribution Company Limited) and the objection thereto filed by the petitioners today be kept on record.
2. Learned counsel appearing for the WBSEDCL places reliance on the report and submits that in the event the shifting as contemplated is to be done, huge costs would be involved.
3. Learned counsel for the petitioners reiterates that the question of ownership cannot be reopened, since there was a previous direction by a coordinate Bench of this Court regarding construction of a boundary wall by the petitioners.

4. Learned counsel appearing for the petitioners also places reliance on the order dated September 21, 2022 passed by this Court in W.P.A. 17087 of 2022 and submits that the issue decided therein is sought to be reopened by the WBSEDCL.
5. A perusal of the order dated September 21, 2022 clearly indicates that the limited scope before the District Magistrate was to hold an enquiry, upon giving opportunity of hearing to the parties, to ascertain whether the petitioners are the owners of the land where the transformer has been installed. In the said order, it was clearly enumerated that in the event the District Magistrate holds in favour of the petitioners' contention that the petitioners are the owners of the land, the District Magistrate shall immediately direct the WBSEDCL to remove the transformer from the petitioners' land to any other appropriate place, in accordance with law and shall also consider the issue of whether any compensation or damages is required to be paid to the petitioners for having installed the transformer on the petitioners' land without taking prior consent from the petitioners and causing damages thereby. Only in the event

the District Magistrate was of the opinion that the petitioners do not have any right, title or interest on the property, was the District Magistrate to consider the issue of compensation which ought to be awarded to the petitioners.

6. Unfortunately, in the order dated December 07, 2022, the District Magistrate put the cart before the horse. The District Magistrate, in a very cryptic order, without even referring to the direction of this court, went on to hold that on considering the facts and observations and after “careful perusal of the available documents and submissions”, the Magistrate directed the WBSEDCL to carry out a joint inspection with the petitioners to explore the possibility of shifting the transformer and existing electric poles without hampering the interest of others.
7. Unfortunately, the District Magistrate totally misconstrued the order of this Court dated September 21, 2022. It was for the District Magistrate first, to decide *prima facie* as to whether the petitioners are the owners of the property where the transformer is installed. Without making any endeavour to do so, the District Magistrate directly proceeded to direct

the WBSEDCL to carry out a joint inspection, for some unknown reasons.

8. Let it be clarified as to what is the limited scope of the District Magistrate in terms of the order dated September 21, 2022.
9. First, the District Magistrate, upon giving opportunity of hearing and opportunity to produce documents to the parties, shall ascertain whether the petitioners are the owners of the land where the disputed transformer is installed.
10. Secondly, in the event it is found that the petitioners are indeed owners of the land, the District Magistrate has no other option but to direct the WBSEDCL to remove the transformer and, if necessary, the overhead line, from the petitioners' land to any other appropriate place, in accordance with law.
11. In doing so, the WBSEDCL shall not claim any expenses from the petitioners for such shifting. Over and above, in such case, if the petitioners are found to be the owners of the land, the District Magistrate shall also consider the issue of compensation or damages if required to be paid to the petitioners and, if so, what amount, for the WBSEDCL having installed the transformer on the petitioners' land and

causing damages, without taking prior consent of the petitioners.

12. In the event, however, it is found that the petitioners are not the owners of the property and do not have any right, title or interest therein, the limited scope before the District Magistrate would be to pass an order ascertaining whether the petitioners are entitled to compensation for the damages caused by installation of the transformer, if at all.

13. In such event, it would be open to the petitioners to seek a shifting of the transformer and the overhead line to an alternative location at their own cost.

14. Thus, in view of the above observations, W.P.A. No. 12366 of 2023 is disposed of, by directing the District Magistrate, Purba Medinipur to rehear the issue upon giving fresh opportunity of hearing and production of documents to both sides, strictly in compliance of the directions dated September 21, 2022 passed in W.P.A. No. 17087 of 2022 and in the light of the observations as clarified above.

15. Upon such exercise being concluded, the District Magistrate shall pass necessary orders. The entire exercise of hearing afresh and adjudicating the matter shall be concluded as

expeditiously as possible, positively within three months from the date of communication of this order to the District Magistrate.

16. It is expected that the District Magistrate shall be more cautious in future in carrying out the orders passed by this Court to its letter and spirit instead of shirking such duty.

17. There will be no order as to costs.

18. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

Sabyasachi Bhattacharyya, J.