

D/L. 9.
June 27, 2023.
MNS.

WPA No. 14513 of 2023

HLG Memorial Hospital (P) Ltd. and
another
Vs.

The State of West Bengal and others

Mr. Biswaroop Bhattacharya,
Mr. Jaydeb Ghorai,
Mr. Diptesh Ghorai

... for the petitioners.

Mr. Indradeep Basu,
Ms. Swagata Roy

...for the respondent nos. 6 to 9.

Affidavit-of-service filed in Court today be
kept on record.

Despite service, none appears on behalf of
the respondent nos. 1 to 5, although the respondent
nos. 6 to 9 and the petitioners are represented
through counsel.

The petitioners are the purchasers of
property, which was sold by the Security and
Exchange Board of India authorities in terms of
Section 28A of the Securities and Exchange Board
of India Act, 1992 (hereinafter referred to SEBI Act).

It is submitted that, in terms of the sale certificate issued in favour of the petitioners, the sale was duly effected and the possession handed over to the petitioners.

However, such handing over of possession was only notional in a sense, since the possession could not be effective, as there is some dispute as to the exact identity of the property-in-question, which was sold to the petitioners.

As such, pursuant to the provisions of Section 28A(2) of the SEBI Act, the SEBI authorities as well as the petitioners sought to seek assistance of the local District Administration for appointment of a government 'Amin' for the purpose of demarcation of the property-in-question.

However, the same was not granted by the respondent nos. 1 to 5.

Learned counsel places reliance on a communication dated April 28, 2023 annexed at page 355 of the writ petition, whereby the SEBI had written to the concerned authority, that is, the Additional Secretary to the Government of West Bengal, intimating that already the Additional District Magistrate concerned had written to the said authority for advice in the matter of providing

assistance for demarcation and recovery of possession.

Learned counsel for the petitioners, in his usual fairness, also points out that despite the petitioners having applied for mutation in their names, the same was refused by the Prescribed Authority primarily on the ground that the claimed plot does not match with the field verification/the petitioners do not possess the plot/documents produced do not match with the claim.

Although the petitioners intend to challenge such refusal to mutate their name before the appropriate forum, the possession of the petitioners cannot be effective in the meantime in the absence of any proper demarcation by the 'Amin'.

Learned counsel for the SEBI places reliance on the documents annexed to the writ petition to argue that the SEBI has duly taken steps before the appropriate authorities for the purpose of getting help to have the property demarcated and to ensure that the possession handed over to the petitioners becomes effective.

A perusal of Section 28A(2) of the SEBI Act clearly shows that the Recovery Officer (RO) shall be empowered to seek the assistance of the local

District Administration while exercising the powers under Section 28A(1) of the SEBI Act.

Section 28A(1) of the SEBI Act pertains to recovery of amounts, *inter alia*, by the modes of attachment and sale of the immovable property of the accused person.

In the present case, there is no doubt as to the petitioners being the holders of a sale certificate which shows that a valid sale already has been effected in favour of the petitioners.

However, the inaction on the part of the respondent nos. 1 to 5 with regard to rendering the assistance for the purpose of exercising the powers under Section 28A(1) of the SEBI Act by the RO is required to be deprecated.

Since the State respondents choose to remain unrepresented when the matter is called on for hearing, no further notice is being directed.

In view of the above observations, WPA No. 14513 of 2023 is allowed, thereby directing the respondent nos. 2 and 4 to make the necessary arrangements, including providing a registered Amin of the State, to carry out the demarcation of the property-in-question, to ensure that effective possession is handed over to the petitioners.

The ground of objection of the respondent nos. 1 to 5 for non deployment of government Amin for the purpose of demarcation, on the score that the land-in-dispute is a private land, is hereby set aside, since the conferment of authority and mandate under the statute on the local authorities is not on equivalent footing as a private land but in terms of provisions of Section 28A(2) of the SEBI Act, which is a statutory duty of the State-respondent, to deploy the government Amin or take necessary steps as required by the Recovery Officer (RO).

It is made clear that such assistance shall be given, as per above direction, by the respondent nos. 2 and 4 to the RO for the purpose of demarcation of the property-in-question and giving effective possession to the petitioners as expeditiously as possible, positively within one month from the date of communication of this order to the respondent nos. 2 and 4.

The parties, for the purpose of compliance, shall act on the communication of the learned Advocate for the petitioners, accompanied by a server copy of this order, without insisting upon prior production of a certified copy thereof.

There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)