

05.09.2023
rc/ct.no.10
Item No.02

WPA No. 16485 of 2023
Montu Sardar & Ors.
Versus
The State of West Bengal & Ors.

Mr. Udayan Chakravarty
Mrs. Sanjukta Bhattacharya
Ms. Nilanjana Dasgupta ...for the petitioners

Mr. Chandi Charan De
Mr. Sadhan Halder for the State

Mr. S.N.Arefin
Mr. Partha Chakraborty
Mr. Muhammad Obaid ...for the Respondent No. 11

Today this matter is fixed for extension of interim order.

By consent of the parties this writ petition is treated as on day's list and taken up for consideration.

Heard learned counsels appearing on behalf of the parties.

The petitioners have assailed the order passed by the Sub-Divisional Executive Magistrate on February 22, 2023 though the same has been wrongly recorded in the prayer (b) of the writ petition as March 22, 2023 and also the order passed by the District Magistrate on April 19, 2023. The petitioners claim to be in possession of the plot in question for considerable period of time and submit that the shops run by them therein do not encroach upon the PWD road in any manner and even after completion of widening of the road, 4 ft. vacant land is lying between the road and the shop rooms of the petitioners. The petitioners

allege that the private respondent who has his land behind the petitioners' land has falsely alleged that the petitioners are causing obstruction in his egress and ingress, only with a view to harass the petitioners and obstruct them from carrying on their lawful business in their land. Proceeding under Section 10 of the West Bengal Highways Act, 1964 (in short, "the Act of 1964") was initiated against the petitioners and an order passed under Section 10(3) of the Act of 1964. The petitioners preferred an appeal against the said order under Section 10(4) of the Act of 1964 which was dismissed. Both the orders are assailed in the writ petition.

Learned counsel for the private respondents takes this Court to three writ petitions filed before coordinate Benches of this Court earlier in respect of the property involved in this writ petition. The first writ petition being WP No. 4425(W) of 2012 filed by the private respondent herein was allowed by an order passed on March 26, 2012 directing the State-respondents to hand over peaceful vacant possession of the plot in question in favour of this private respondent within a stipulated time frame.

The present petitioners filed a writ petition being WP No. 35576(W) of 2013 challenging the action initiated by the State authorities against them for removal of encroachment on public highway. The issues raised by the writ petitioners in the present writ petition were also raised in the earlier writ petition and considered by this Court in

the order passed on January 29, 2014 by which this Court turned down the prayer of the petitioners on an observation that it was open to the statutory authorities to deal with the public land in accordance with law and the petitioners could not have any legal right to object to the same. Since the State authorities did not take appropriate steps against the present writ petitioners in terms of the said order, the private respondent approached this Court in a writ petition being WPA No. 23138 of 2015. By an order passed on November 09, 2022, this Court, upon consideration of the submission made by both the parties, directed the Sub-Divisional Officer to conclude the proceeding under Section 10 of the Act of 1964 at the earliest, positively within two months from the date of communication of the order, after hearing the concerned parties. The order under Section 10(3) of the Act of 1964 was passed in compliance with the order of this Court and an appeal under Section 10(4) of the Act of 1964 preferred against the said order was dismissed upon hearing the parties.

The petitioners have not disclosed the writ petitions being WP No. 4425(W) of 2012 and WP No. 35576(W) of 2013 being filed or orders passed therein though they pertain to the subject matter of the present writ petition, thereby suppressing material facts. The petitioners have not come to Court with clean hands which is the primary requirement for seeking relief before a court of law.

All the issues raised in the present writ petition by the petitioners have been elaborately dealt with by Coordinate Benches of this Court in the earlier writ petitions wherein the Courts directed initiation as well as conclusion of proceedings under Section 10 of the Act of 1964 within a stipulated time frame.

It is submitted on behalf of the respondents that the authorities are unable to take necessary steps in compliance with the Court orders due to continuous resistance raised by the petitioners in and out of Court.

Upon consideration of the submission made on behalf of the parties as well as material on record, this Court is left no doubt as to the fact that the issues raised by the petitioners herein have already been decided in the earlier writ petitions and no further case has been made out by the petitioners in the present writ petition which warrants further consideration.

In view of the above, it is held that the writ petition is devoid of any merit and is liable to be dismissed.

Accordingly the writ petition being WPA No. 16485 of 2023 is dismissed.

The 5th respondent is directed to take necessary steps for removal of encroachment made by the petitioner on public land within four weeks from the date of communication of this order.

The 8th respondent is directed to render all possible assistance to the 5th respondent in executing the order

passed by the District Magistrate under Section 10(4) of the Act of 1964.

With the above observation and direction this writ petition being WPA No. 16485 of 2023 is disposed of.

There shall, however, be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Suvra Ghosh,J)