

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA 18324 of 2023

**Smt. Jharna Pradhan (Maity) and Ors.
Vs.
The State of West Bengal & Ors.**

Mr. Soumen Kumar Dutta
Mr. Sabyasachi Bhattacharjee

..for the petitioners

Mr. N. C. Bihani
Ms. P. B. Bihani

..for the D.S.D.A.

Mr. Jayanta Samanta
Mr. D. Chakraborty

..for the State

Heard & Judgment on: 01.08.2023

Bibek Chaudhuri, J.

Indisputably, the petitioners are unauthorized occupants in respect of a piece of plot being No. 1676 appertaining to Khatian No.1 at Mouza Dakshin Purusattampur, J.L. No. 286 in Mandarmoni Coastal Police Station. It is also not in dispute that a proceeding

under the provision of the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962 was initiated against the petitioners and other unauthorized occupants on the basis of a report of the jurisdictional Block Land and Land Reforms Officer. The Collector and S.D.O., Contai adjudicated the said proceeding and passed an order of eviction. The petitioners challenged the said order by filing a writ petition before this Court. This Court disposed of the writ petition giving opportunity to the petitioners to prefer a statutory appeal under Section 7 of the said Act. The petitioners preferred a Mandamus Appeal before the Division Bench of this Court and the Division Bench presided over by the Hon'ble the Chief Justice disposed of the said appeal holding, inter alia, that the impugned order was passed in violation of the principles of natural justice. In such circumstances, the order dated 13th October, 2022 was set aside. The matter was remitted back to the Collector and S.D.O., Contai with a direction to supply a copy of the report of B.L. & L.R.O., Ramnagar and thereafter take a fresh decision in accordance with law after giving an opportunity of hearing to the appellants. Subsequently, as per direction of the Division Bench the report of the B.L. & L.R.O. was served upon the petitioners and the Collector-cum-Sub-Divisional Officer, Contai again passed the order of eviction against the petitioners. On the basis of said eviction

order the petitioners were served notice by the respondent No.3 directing them to quit, vacate and surrender the peaceful possession of the plot in question by 2nd August, 2023.

Challenging the impugned order passed by the Sub-Divisional Officer on 10th April, 2023 and consequent notice issued to the petitioners by the respondent No.3 are challenged in the instant writ petition.

At the outset, the learned advocate for the State respondents has raised a question of maintainability of the instant writ petition on the ground that when the statute provides a remit by filing an appeal under Section 7 of the Act, the instant writ petition is not maintainable.

In reply thereto it is contended by the learned advocate for the petitioners that if the order impugned is passed by the authority without jurisdiction, the petitioners do not require to prefer an appeal and the writ petition is maintainable because the order itself is bad in law and mala fide having been passed without jurisdiction. In support of his contention the learned advocate for the petitioners refers to the following decisions:-

**(i)..(1998) Volume 8 SCC 1 (Whirlpool Corporation –
vs.- Registrar of Trade Marks, Mumbai.**

- (ii) (2021) 6 SCC 771 (Radha Krishan Industries – vs.- State of Himachal Pradesh and Ors.)**
- (iii) (2011) 14 SCC 337 (Nivedita Sharma –vs.- Cellular Operators Assn. of India).**

It is no longer res integra that an administrative order passed without jurisdiction is amenable to the writ petition because the administrative authority assumes jurisdiction under the statute and if the statutory provision is not followed, entire proceeding is bad in law, mala fide and unsustainable.

Since the learned advocate for the petitioners submits that the impugned order is without jurisdiction, I like to hear out the instant writ petition on merit including the question of maintainability.

The learned advocate for the petitioners next draws my attention to the definition of 'Collector' contained in Section 2(1) of the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962 (hereinafter described as the 1962 Act).

"Section 2(1) defines 'Collector' in the following words:-

2(1) 'Collector' means –

- (a) in Calcutta the Land Acquisition Collector, Calcutta and
- (b) elsewhere the Chief Officer-in-charge of the Revenue Administration of the District, includes an Additional District Magistrate, a Sub-Divisional Magistrate and any Executive Magistrate specially appointed by the State Government to perform all or any of the functions of a Collector under this Act."

Next he draws my attention to the letter of appointment of the Sub-Divisional Officer of Contai Sub-Division vide Notification No. 1418-PER (WBCS)-1D-292-2022.

The order runs thus:-

"In exercise of the power conferred on sub-Section (4) of Section 20 of the Code of Criminal Procedure 1973, the Governor is pleased, in the interest of public service to place Sri Souvik Bhattacharya, WBCS (Executive), an Executive Magistrate-in-charge of Contai Sub-Division, District Purba Medinipur until further order(s)."

It is submitted by the learned advocate for the petitioner that the Sub-Divisional Officer, Contai was not appointed specially by the State Government to perform all or any of the functions of Collector under the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962.

Let me now read out and scan the definition of 'Collector' contained in 1972 Act. In Clause (b) of Sub-Section (1) of Section 2 of the 1963 Act, in respect of the area outside the jurisdiction of Calcutta the Chief Officer-in-charge of Revenue Administration of the District is empowered to perform all or any of the functions under 1962 Act by virtue of his being the Collector of the District. For the Collector of the District no special power is required to be passed by the State Government. The Collector by virtue of his position can perform all acts under the 1962 Act.

In case of Additional District Magistrate, a Sub-Divisional Magistrate or any Executive Magistrate who has not been empowered to act as a Collector, special order of the State Government is necessary to perform all or any of the functions of a Collector under the 1962 Act. The word 'and' includes in Clause 'B' of Sub-Section (1) of Section 2 is of much importance. The word 'and' disjuncts the power of the Collector from that of the Additional District Magistrate, Sub-Divisional Magistrate and any Executive

Magistrate. So for Collector no special order of the State Government is necessary. But for the Additional District Magistrate, a Sub-Divisional Magistrate and any Executive Magistrate special order empowering them to perform all acts under 1962 Act is absolutely necessary.

Coming to the instant case it is found that the Sub-Divisional Officer, Contai passed the order not as Sub-Divisional Officer but as the Collector. It is not challenged in the instant writ proceeding as to whether the Sub-Divisional Officer, Contai Sub-Division can exercise the power of Collector or not. Thus, when the impugned order dated 10th April, 2023 was passed by the Collector of Contai Sub-Division, the order does not suffer from any jurisdictional error.

Second limb of argument of the learned Advocate for the petitioners is that the notice for eviction dated 5th April, 2023 was not in prescribed format. It is submitted by him that the West Bengal Public Land (Eviction of Unauthorized Occupants) Rules, 1963 prescribed the form and manner of service of notice of Rule 3. In the schedule of the said Rules the form of notice under Sub-Section (1) of Section 3 has been delineated. It is submitted by the learned Advocate for the petitioners that no notice was served in the form mentioned in Rule 3(1) of the above-mentioned Rules. Therefore, the notice is bad in law. When the eviction notice is bad in law,

insufficient and inoperative, subsequent eviction proceeding is also suffers from abuse of the process and *mala fide* in the nature.

The learned Advocate for the petitioners also submits that by virtue of the impugned order dated 10th April, 2023, the Executive Officer, Digha Sankarpur Development Authority issued a notice of eviction directing the petitioners to quit, vacate and deliver peaceful possession in favour of the Government by 2nd August, 2023 and if they fail, they will be evicted on 3rd August, 2023 at 10.00 A.M. The learned Advocate for the petitioners refers some other notice dated 28th July, 2023 directing some of the unauthorized occupants to ignore the said notice of eviction. It is submitted by the learned Advocate for the petitioners that the executive authority is functioning in a discriminatory manner in respect of eviction process. While the petitioners were protected to be evicted, other unauthorized occupants are being protected by the State authority.

It is found from the order dated 6th January, 2023 passed in MAT/2032/2022 that the petitioners were directed to take part in hearing of the eviction proceeding before the Collector and SDO. The Division Bench was pleased to set aside the order dated 13th October, 2022. In view of the said direction passed by the Division Bench of this Court the Collector and SDO, Contai issued the notice dated 5th April, 2023 to the petitioners directing them to appear in

the hearing. The subject-matter of the notice is 'hearing notice'. It is not a notice under Rule 3(1) of the said Rules of 1963.

Moreover, if the petitioners had any grievance with regard to the form and manner of notice which was issued to the petitioners they could have raised the issue before the Single Bench in the earlier writ petition or before the Division Bench in MAT/2032/2022. The petitioners preferred not to agitate the issue of legality, validity and sufficiency of the notice in the earlier writ petition or mandamus appeal. The petitioners also preferred not to agitate the power of the Collector and SDO, Contai to deal with an eviction proceeding under the 1962 Act. The petitioners could have raised such issues in the earlier writ petition as well as in appeal. At this stage, the contention of the petitioners is barred by the principle of constructive *res judicata*.

In view of the above discussion, I do not find any merit in the instant writ petition. The writ petition is, thus, dismissed on contest, however, without cost.

[Bibek Chaudhuri, J.]

Suman/Srimanta, A.Rs.(Ct.)
Item No. 02.