

AD-23
Ct No.09
07.12.2023
TN

WPA No. 20517 of 2023

Dhiren Kumar Patra and another
Vs.
The State of West Bengal and others

Mr. Manoranjan Jana
.... for the petitioners

Mr. Sumon Ghosh,
Mr. S. Ghosh
.... for the State

Mr. Balaram Pandit,
Mr. Krishno Deo Das
.... for the respondent nos.9-14

- 1.** Learned counsel for the petitioners contends that despite the petitioners having written a representation to the PWD (Roads) Authority, no steps have been taken for removal of encroachment on PWD land.
- 2.** Learned counsel appearing for the respondent-authorities hands over copies of written instructions and other documents and submits that on the basis of the representation of the petitioners, due intimations were made to the BL&LRO for holding inspection to ascertain whether there has been any encroachment of government land.

- 3.** Upon such intimations on August 08, 2023 and September 09, 2023, the inspection was ultimately held in the month of September, 2023 and a report has been filed which indicates that there has been, indeed, encroachment of government land by certain encroachers. It is submitted that the respondent-authorities shall take immediate steps for issuance of notices under the concerned Act of 1962, that is, the Public Land (Eviction of Unauthorised Occupants) Act, 1962 at the earliest.
- 4.** Learned counsel for the private respondents objects to the maintainability of the writ petition and submits that in terms of the subject as mentioned in the representation of the petitioner annexed at page-35 of the writ petition, the matter pertains to Highway property and, as such, the appropriate Act would be the West Bengal Highways Act, 1964 and not the 1962 Act. Hence, there is confusion in the mind of the petitioner himself as regards the Act under which the alleged encroachers should be removed.
- 5.** However, the point taken by the private respondents does not furnish sufficient reason for non-maintainability of the writ petition. The writ petitioner, as a citizen of India, has merely

pointed out the irregularities on the part of the respondent-authorities in not taking appropriate action for removal of the encroachers of government land and it is not incumbent upon the petitioner to quote the correct provision of law in his representation.

- 6.** In any event, it is for the respondent-authorities to choose the statute under which they will take appropriate steps against the alleged encroachers. Since the respondent-authorities submit that they are on the verge of initiating proceedings under the 1962 Act, there cannot be any impediment in doing so.
- 7.** Accordingly, WPA No. 20517 of 2023 is disposed of by directing the respondent-authorities to initiate proceedings under the Public Land (Eviction of Unauthorised Occupants) Act, 1962 at the earliest and make all endeavours to have the said proceeding disposed of at the earliest.
- 8.** It is expected that the entire process shall be concluded within six months from date.
- 9.** Nothing in this order, however, shall preclude the respondent-authorities from intimating the appropriate authorities if in the opinion of the respondent-authorities it is found that a portion of the encroachment pertains to Highway

property, in which case the respondent-authorities shall also intimate the appropriate authorities to take steps under the said statute against the portion of the illegal encroachment which falls within the domain of the West Bengal Highways Act, 1964. Such action, it is expected, shall also be taken simultaneously with initiation of the proceeding under the 1962 Act.

10. It is, however, made clear that the allegations of encroachment and counter-allegations between the parties have not been entered into by this court and it will be open to the appropriate authorities under the respective statutes to deal with the same independently and in accordance with law upon giving adequate opportunity of hearing to all concerned.

11. 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.)