

ADSL 19
25.08.2023
mb

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 20944 of 2023

Smt. Jharna Pradhan (Maity) & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Biswaroop Bhattacharya,
Mr. A.N. Bhattacharyya,
Ms. Sayani Das,
Mr. Snehasish Dey,
Mr. Arya Bhattacharyya
...for the petitioners

Mr. Jayanta Samanta,
Mr. Manas Kumar Sadhu
...for the State

Learned counsel appearing for the petitioners submits that a proceeding was taken out against the petitioners under the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962. Initially, the order of S.D.O. was challenged before this Court, whereupon the matter was relegated to the appellate authority. Ultimately, upon an appeal having been preferred against the previous order of the learned Single Judge, the concerned Division Bench, vide order dated January 06, 2023 passed in MAT 2032 of 2022, set aside the order dated October 13, 2022 and remitted the matter back to the first authority, that is, the Collector and Sub Divisional Officer (S.D.O), Contai with a direction to

supply a copy of the report of the Block Land and Land Reforms Officer, Ramnagor-II and thereafter take a fresh decision in accordance with law after giving an opportunity of hearing to the present petitioners.

Subsequently, the petitioners approached the S.D.O. However, vide order dated April 10, 2023, the S.D.O. again passed an order of demolition of the alleged encroachment by the petitioners, by placing reliance on a new report dated March 27, 2023 apparently authored by the BL & LRO, Ramnagore-II.

It is argued that the premise of the order of the Division Bench setting aside the previous order was that no copy of the enquiry report, on which the S.D.O. relied on, was served on the petitioners.

Although the said previous report was served, the same exercise has been repeated by the S.D.O., it is contended, by relying on another report, no copy of which was ever given to the petitioners. Hence, the exercise, it is argued, was palpably *de hors* the law and against the spirit of the order of the Division Bench.

The petitioners, thereafter, preferred a challenge before the writ court. The writ court, however, also dismissed the writ petition. It is insinuated by learned counsel for the petitioners

that the writ court proceeded on the premise that the petitioners had not approached before the appellate authority against the order of the S.D.O.

As such, immediately upon the order of the writ court, the petitioners preferred an appeal. However, during pendency of the appeal, almost as soon as the same was filed, steps were taken for demolition of the petitioners' property and the structure was partially demolished. It is submitted that the said attempt was calculated at rendering the appeal of the petitioners infructuous. Thus, the petitioners seek a stay of further demolition by the respondent-authorities.

Learned counsel appearing for the State, apart from controverting the allegations made herein, hands over a copy of the last judgment of the writ court, dated August 01, 2023. It is argued that no liberty was given to the petitioners to prefer any appeal against the order of the S.D.O. As such, it is argued that the process of demolition has been undertaken in due process of law.

A perusal of the order of the coordinate Bench dated August 01, 2023 indicates that the learned Single Judge narrated the previous incidents, as argued by learned counsel. Thereafter it was observed, inter alia, that coming to the instant case, the Sub Divisional Officer, Contai passed the

order not as Sub Divisional Officer but as the Collector. It was not challenged in the writ proceedings, it was observed, whether the Sub Divisional Officer can exercise the power of Collector or not. Thus, it was observed that the impugned order dated April 10, 2023 was passed by the Collector and the order does not suffer from any jurisdictional error. The second limb of argument of the petitioners, it was observed, was that that the notice for eviction dated April 05, 2023 was not in prescribed format. It was submitted by the petitioners that the Rules of 1963 prescribed the form and manner of service of notice of Rule 3. The discussion thereafter proceeded on such premise.

As per the learned Single Judge, it was found from the order dated January 06, 2023, passed in MAT 2032 of 2022 that the petitioners were directed to take part in hearing of eviction proceeding before the Collector and S.D.O. In view of such direction, the Collector and S.D.O. issued the notice dated April 05, 2023 directing the petitioners to appear in the hearing. The subject-matter of the notice, it was recorded, was 'hearing notice'. As such, it was not a notice under Rule 3(1) of the 1963 Rules. Moreover, it was held that 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 learned Single Judge in the earlier writ petition. Having preferred not to do so, it was held that the contentions of the petitioners are barred by the principles of constructive res judicata.

It is found from the ordering portion of the learned Single Judge in the order dated August 01, 2023 that no liberty was granted, as such, to the petitioners to challenge the order of the S.D.O. afresh before an appellate authority.

Although it is seen from the photographs handed over in court today that substantial demolition work has already been carried out, it cannot be said that the demolition was carried out *de hors* due process of law. The demolition work was rightly carried out in terms of the order of the S.D.O dated April 10, 2023, which was unsuccessfully challenged by the petitioners before the writ court.

Although the petitioners have preferred a challenge subsequently before the appellate authority against the S.D.O. order which was impugned in the previous writ petition, the question as to whether the said challenge is also barred by constructive res judicata remains open, since there is nothing in the order of the coordinate

Bench dated August 01, 2023 to show that any leave was granted to the petitioners to approach the appellate authority.

Learned counsel for the petitioners vociferously places reliance on the third paragraph of the third page of the order dated August 01, 2023, a copy of which is handed over in court by the State and is kept on record. It is recorded there that at the outset, learned counsel for the State-respondents raised a question of maintainability of the writ petition on the ground that when the Statue provides a remit by filing an appeal under Section 7, the writ petition is not maintainable. However, the rest of the order is not limited to the question of maintainability alone.

It was observed by the Court that since the learned counsel for the petitioners submits that the impugned order is without jurisdiction, the Bench heard out the instant writ petition on merit, including the question of maintainability. As such, my earlier view is reiterated to the effect that the ultimate consideration by the learned Single Judge was not restricted to maintainability but also addressed the merits of the issue.

In such conspectus, it is doubtful as to how far the petitioners have even a prima facie case in

the appeal pending before the appellate authority, that is, the District Magistrate.

Be that as it may, since an appeal has been preferred by the petitioners and the same is pending, it is expected that the petitioners shall be given some breathing space to move an interlocutory application in connection with the appeal before the appellate authority for getting any interim order, if the appellate authority so deems fit. However, nothing in this order shall be construed to mean that the petitioners have made out a sufficient case for getting an interim order before the appellate authority or otherwise.

In any event, there is no scope to grant any interim order in the writ petition and/or even entertaining the writ petition on merits.

Hence, W.P.A. 20944 of 2023 is dismissed, with liberty to the petitioners to prosecute it appeal pending before the appellate authority against the order of the S.D.O.

The respondents shall remain restrained for a period of one week from date from carrying out any further demolition work with regard to the property in dispute.

However, in the event the petitioners fail to obtain any interim order from the appellate

authority within that period, the respondents shall be at liberty to carry on with the demolition work.

It is expected that in the event the petitioners approach the appellate authority at the earliest with an interlocutory application, the same will be considered at least for the purpose of deciding ad interim prayers within a week from date.

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 of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)