

September 22, 2023

ARDR (1) (S/L)

WPA 23195 of 2023

M. B. Sponge and Power Ltd. & ors.

Vs.

The State of West Bengal & Ors.

Adv. Pradip Kumar Tarafder,
Adv. Sambuddha Dutta,

...for the petitioners.

Adv. T. M. Siddiqui,
Adv. Soumitra Bandyopadhyay,
Adv. Priyabrata Batabyal,

...for the State.

Heard learned counsels for the parties.

It is contended on behalf of the petitioners that the petitioners applied for long term lease before the Government in respect of the plot in question for carrying on business therein which is under consideration by the Government. The petitioners obtained no objection certificate from Jamuria Municipality and Hijalgora Gram Panchayat for the same which was communicated to the Government. The Additional District Magistrate and District Land & Land Reforms Officer, Burdwan, by a letter issued on 15th November, 2007 to the Joint Secretary, Land & Land Reforms Department requested the latter to consider the proposal for long term settlement of Government vested land in favour of the petitioners upon consideration of the documents including the project report, calculation sheet, resolution of Bon O Bhumi Sanskar Sthayee Samity, Jamuria, NOC of the Panchayat, NOC of the

Municipality and vetted sketch map and khatian. The NOC from the Commerce and Industries Department, Government of West Bengal as well the Pollution Control Board were also submitted by the petitioners before the authority. By a communication made by the Additional Secretary to the Government of West Bengal to the petitioners, it was informed that an area of 8.69 acres of land was available for settlement instead of 9.79 acres proposed earlier and the same was accepted by the petitioners. Since no further step was taken by the Government in this regard, the petitioners, by a letter issued on 25th July, 2022, requested execution of the long term lease in their favour. A letter issued to the Additional District Magistrate and District Land & Land Reforms Officers, Paschim Burdwan by the Block Land & Land Reforms Officer, Jamuria on 20th March, 2023 demonstrates that the land for which the petitioners applied for long term settlement was already within the boundary wall of the company. As per the office records, no record was found in respect of plot no.1771. 2.50 acres of *rayati* land was found in the records, but there was no record pertaining to 6.02 acres. The Block Land & Land Reforms Officer sought permission for inclusion of plot nos. 1771 and 1798 of Mouza Hijalgora and plot no.2077 of Mouza Ikrah in the Collector's khatian, i.e. khatian number 1 so that the plots could be

recommended for the long term lease in favour of the petitioners.

A public interest litigation was filed before the Hon'ble Division Bench dealing with matters alleging encroachment and illegal construction upon the Government land which was disposed of by an order passed on 6th September, 2022 permitting the petitioner therein to file an appropriate representation before the 5th respondent and a direction upon the 5th respondent to consider the grievance of the petitioners and conduct an enquiry, if required, and take appropriate decision in accordance with law within three months from the date of receipt of the representation. In compliance with the said order and upon holding the petitioners to be the encroachers of Government land, proceeding under the provisions of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 was initiated and notice under Section 3(1) of the Act was served upon the petitioners. Upon hearing the petitioners, the Sub-Divisional Magistrate, Asansol, Paschim Burdwan, by an order passed on 13th September, 2023 under Section 4(1) of the Act of 1962 directed the petitioners to remove their encroachment upon the Government land within 22nd September, 2023 failing which the Block Land & Land Reforms Officer, Jamuria Block was directed to enforce eviction as well as removal of the aforementioned occupation and restore possession of the plots, followed

by a report to be submitted before the Sub-Divisional Magistrate.

Learned counsel for the petitioners submits that the order was communicated to them yesterday, i.e. on 21st September, 2023 and the date of demolition has been fixed today. The petitioners seek an opportunity to prefer an appeal against the said order under Section 7 of the Act.

Learned counsel for the State respondents submits that the petitioners have encroached upon Government land by raising a boundary wall therein prior to grant of lease in their favour and as such, have no locus-standi to claim any relief in the writ petition. The petitioners are admittedly encroachers of Government land and cannot claim any relief herein. Learned counsel further submits that a contempt application in connection with the order passed in the public interest litigation is pending.

Section 7 of the Act of 1962 permits the petitioners to prefer an appeal from an order passed under this Act within fifteen days from the date of order appealed against.

Since it is not in dispute that the order was communicated to the petitioners only on 21st September, 2023, the petitioners are entitled to prefer statutory appeal against the said order within 5th October, 2023.

In the event the petitioners prefer the statutory appeal within 5th October, 2023, the appellate authority

shall consider and dispose of the appeal within two weeks from the date of filing thereof, in accordance with law.

No coercive action be taken against the petitioners in respect of the plots in question till disposal of the appeal.

If the petitioners fail to prefer the appeal within the said period, the respondent authorities shall be at liberty to take necessary steps in terms of the order dated 13th September, 2023.

However, this order shall not preclude the authority from considering execution of the long term lease in favour of the petitioners.

With the aforesaid observations and directions, the writ petition, being WPA 23195 of 2023 is disposed of.

There shall be, however, 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.)