

September 22, 2023

ARDR (2) (S/L)

WPA 23199 of 2023

UTZSHO Buildcon Private Ltd.

Vs.

The State of West Bengal & Ors.

Adv. Jishnu Chowdhury,
Adv. Debrup Bhattacharjee,
Adv. Rituparna Saha,

...for the petitioner.

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

...for the State.

Heard learned counsels for the parties.

The petitioner applied for long term lease before the respondents for carrying on business therein which is under consideration by the authority and on the basis of the assurance given by the authority for grant of such lease, the petitioner raised guard wall surrounding the proposed leasehold property in order to protect the property from being washed out by the canal which flows adjacent thereof.

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 petitioner 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 petitioner to be encroacher 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 petitioner. Upon hearing the petitioner, 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 petitioner to remove the 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 petitioner 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 petitioner seeks 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 petitioner has encroached upon Government land by raising a boundary wall therein prior to grant of

lease in his favour and as such, has no locus standi to claim any relief in the writ petition. The petitioner is admittedly an encroacher 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 petitioner 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 petitioner only on 21st September, 2023, the petitioner is entitled to prefer statutory appeal against the said order within 5th October, 2023.

In the event the petitioner prefers 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 petitioner in respect of the plots in question till disposal of the appeal.

If the petitioner fails 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 petitioner.

With the aforesaid observations and directions, the writ petition, being WPA 23199 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.)