

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 1943 of 2023

Rampada Sarkar @ Ramapada Sarkar & Anr.

Vs.

The State of West Bengal & Ors.

For the Appellant : Mr. Biswarup Biswas, Adv.

For the Respondent : Mr. Sarwar Jahan, Adv.
No. 8 : Mr. Koustav Roy, Adv.

For the State : Mrs. Rama Halder, Adv.

Hearing Concluded on : December 11, 2023

Judgement on : December 19, 2023

DEBANGSU BASAK, J.:-

1. Appellant has preferred an appeal against the order dated June 12, 2023 passed in WPA 4491 of 2023 by which, the learned Single Judge directed the 5th respondent in the writ petition to consider and dispose of the representation submitted by the writ petitioner dated November 9, 2020 within three months from the date of communication of the order after affording a reasonable opportunity of hearing to all the interested parties.

2. Appellant before us has contended that, the impugned order was passed without jurisdiction since, the writ petition was classified under Group I and that, the subject matter of the writ petition was eviction proceedings under the West Bengal Highways Act, 1964. According to the appellant, the writ petition ought to have been classified under Group IX and moved before such Court. In support of the contention that, the writ petition should have been classified under Group IX, learned advocate appearing for the appellant has relied upon the rules of the High Court at Calcutta relating to applications under Article 226 of the Constitution and in particular to Schedule B thereof. He has contended that, classification list of different types of writ proceedings was made under Schedule B to the writ rules. Group I has classified matters relating to land laws. The sub-heads that has been classified thereunder, does not contain the Act of 1964. In fact, according to him, the writ petition in respect of an eviction under the Act of 1964 has to be classified under Group IX of the writ rules. He has also referred to the rules relating to Computerized Listing of the Cause List of the Appellate Side and contended that, the same also does not allow writ petition of such a nature to be classified under Group I.

3. Learned advocate appearing for the appellant has drawn the attention of the Court to an order dated August 17, 2022 passed by the Division Bench in ***MAT 1292 of 2022 (Prasanta Kumar Hait and Ors. Vs. The State of West Bengal and Others)*** and contended that, in same circumstances, the Division Bench entertained an appeal passed by the learned Single Judge under Group V. He has also referred to the order dated December 5, 2022 passed in MAT 1292 of 2022 where, recalling of the order dated August 17, 2022 was sought for on the ground that, the writ petition could not be classified under Group V. There, it has been held that, the learned Single Judge had determination under Group V to hear the writ petition.

4. Learned advocate appearing for the appellant has relied upon order dated September 9, 2013 passed in WP 27172(w) of 2013, order dated September 19 of 2013 passed in WP 26936 (w) of 2013 and contended that, a Single Judge of this Hon'ble Court released writ petitions filed concerning the Act of 1964 under Group I on the ground that it should be classified as Group IX. He has also drawn the attention of the Court to an order dated June 10, 2016 passed by the Single Judge in WP 9708(w) of 2016 and contended that, eviction

under the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962 was held to pertain to Group 1 of the classification list.

5. Learned advocate appearing for the appellant has also drawn the attention of the Court to order dated April 26, 2022 passed in WPA 5943 of 2022 and contended that another Single Judge held that, proceedings under the Act of 1964 ought to be heard by a Bench taking matters under Group IX.

6. In his usual fairness learned advocate appearing for the appellant has also drawn the attention of the Court to two orders dated February 4, 2019 and August 9, 2021 passed by one of us sitting singly holding that, the subject matter relating to the Act of 1964 can be classified under Group I. He has also drawn the attention of the Court to an order dated October 9, 2023 passed in MAT 1488 of 2023 where the present Division bench dealt with an appeal against an order passed by the writ Court in respect of the Act of 1964 when the writ Court as well as the Division Bench were vested with the jurisdiction under Group I of the writ rules.

7. Learned advocate appearing for the private respondents has submitted that, a writ petition relating to the Act of 1964 can be classified as Group I in view of the sub-

heads of Group I. He has referred to the provisions to the Act of 1964. He has submitted that, the eviction was from a land which comprised in a highway. Therefore, such a writ petition can be classified under Group I. In support of his contention, he has relied upon the writ rules as also the rules relating to computer listing.

8. The issue that has fallen for consideration is whether a writ petition relating to proceedings for eviction of unauthorized occupants from a highway, undertaken under the Act of 1964 can be classified as Group I or not. The issue of classification of a writ petition relating to proceedings under the of 1964 has been considered by the Co-ordinate Bench in a recalling petition filed in MAT 1292 of 2022. There, the writ petition had been filed under Group V. There, the encroachment was on PWD road by the side of a highway, governed by the Act of 1964. The Division Bench had found involvement of the panchayat, in the facts of that case. In such circumstances, the Division Bench had held that, such writ petition could be classified under Group V as, the matters related to municipalities, co-operative societies and panchayats under Group V. The issue as to whether, the writ petition can be classified under Group I was not answered.

9. State has submitted a report dated October 10, 2023 in the appeal. It appears from such report that appellant before us is guilty of encroachment of PWD land in front of LR Plot No. 5116 and that, the plot on which, the encroachment exists is a Nayanjuli. Nayanjuli is a land appurtenant to the main carriage way of a highway.

10. Encroachment is to a land belonging to government and that encroachment has to be removed. The land may come under the definition of a highway under the Act of 1964 or it may be beyond such definition and may be governed by a different statute for eviction. Essentially, in all statutes of eviction of unauthorized occupiers of Government property, it is an immovable property, that is, land which is involved. In short, encroachers are required to be removed from land belonging to the State. Land is an essential component.

11. The writ rules have classified different types of writ proceedings into nine several categories for the sake of administrative convenience. Group I has classified matters relating to land laws and orders and directions relating to land (including land revenue) and has classified the same under several sub-heads. One of such sub-head is dispute relating to tenancy laws and eviction proceedings. It also has one sub-

head as miscellaneous. Eviction proceedings in respect of land therefore, can be classified under Group 1. This classification has to be understood in light of the rules relating to the Computerized Listing of the Cause List in the Appellate Side. Such rules Chapter XIX Appendix – I Table III subject classification Group A (writ matter) has dealt with the classification of writ matters and in Serial 13 thereof has dealt with land laws. Under land laws, it has classified unauthorized occupation in 13(xii). From such aspect also, unauthorized occupation relating to land has been classified under the broad head of land laws under the Rules relating to Computerized Listing of the Cause List of the Appellate Side. Land has been classified under Group I in the Writ Rules.

12. Eviction proceedings even under the Act of 1964 is on of removing unauthorized occupancy from a land belonging to the State. Central to the eviction proceeding is land of government. Such proceedings if initiated, or failure to initiate, can be construed to be a matter relating to land as contemplated under Group I of the Writ Rules.

13. In a given case, there may be overlapping of the subjects as classified under the Writ Rules. There may in given cases, an overlap of matters relating to Panchayats and

land or between a residuary matter and land. There is such circumstances, the writ petitioner as *dominus litis* would be entitled to choose between the overlapping groups. Correctness of classification of a writ petition in a Group under the Writ Rules would depend of facts and circumstances of each case.

14. On the basis thereof, we do not find that the learned Judge had lacked determination to pass the impugned order.

15. MAT 1943 of 2023 is dismissed without any order as to costs.

[DEBANGSU BASAK, J.]

16. I agree.

[MD. SHABBAR RASHIDI, J.]