

04.10.2023
rc/ct.no.10
Item No.01

WPA No. 23844 of 2023
Yusuf Seikh
Versus
The State of West Bengal & Ors.

Mr. Samim Ul Bari
Mr. Shahriyar Karim Akhan ...for the petitioner

Mr. L.N.Bhattacharya ...for the private respondent

Mr. Soumitra Bandyopadhyay
Mr. Suchana Banerjee ...for the State

The matter has been inadvertently listed as “WPA 23844 of 2022” instead of “WPA 23844 of 2023”.

By consent of the parties WPA No. 23844 of 2023 is treated as on day’s list and taken up for consideration.

Heard learned counsels for the parties.

This case has a chequered history.

It is not in dispute that the petitioner has been occupying 96 sq. ft. of PWD land in LR Plot No. 26033276 in Mouza – Bisweswarpur, J.L.No. 163, and runs a shop therein for about 31 years. The petitioner initially filed an application before the concerned authority for grant of long term settlement in terms of Sections 219 and 220 of the West Bengal Land Reforms Manual, 1991 (hereinafter referred to as “the Manual of 1991”) since the petitioner was under the impression that the land belongs to the Zilla Parishad. Subsequently it was learnt that the land was transferred to the PWD by the Zilla Parishad. Proceeding

under Section 10 of the West Bengal Highways Act, 1964 (hereinafter referred to as "the Act of 1964") was initiated against the petitioner and taken to its logical conclusion by an order under Section 10(3) of the Act of 1964. The petitioner preferred an appeal against the said order under Section 10(4) of the Act of 1964 which was considered and dismissed by the District Magistrate, South 24-Parganas by an order passed on February 24, 2023. The petitioner's prayer for long term settlement of the plot was turned down by the authority against which the petitioner filed a writ petition before this Court. By an order passed on May 04, 2023 in WPA No. 7184 of 2023, a coordinate Bench of this Court set aside the said order and directed the concerned authority to pass a fresh order after hearing the parties and taking into consideration Rule 238 of the Manual of 1991 within a stipulated time frame. The order was carried in appeal by the private respondent herein and an Hon'ble Division Bench of this Court, by an order passed on May 19, 2023 in MAT No. 828 of 2023, reiterated the order of the learned Single Judge. Accordingly, the representation of the petitioner was revisited by the authority and turned down by an order passed on July 26, 2023. After the order of the Hon'ble Single Bench the petitioner filed an application before the Executive Engineer, Diamond Harbour Highway, P.W. (Roads) Department on May 29, 2023 under Section 8 of

the Act of 1964 seeking regularisation of his possession in respect of the plot in question.

Learned counsel for the petitioner submits that the said application is yet to be considered. Learned counsel seeks a direction upon the authority to consider the representation at the earliest.

It is submitted on behalf of the respondents that the earlier representation submitted by the petitioner was reconsidered by the authority in compliance with the order of this Court and the petitioner was all throughout aware that the land in question belongs to the PWD since the proceeding under Section 10 of the Act of 1964 was initiated and concluded and the petitioner also preferred an appeal against the order passed under Section 10(3) of the Act of 1964.

It is a fact that the petitioner was aware that the plot in question belongs to the PWD from the date of initiation of proceeding under Section 10 of the Act of 1964, if not earlier. Be that as it may, since the petitioner has made an application under Section 8 of the Act of 1964 which is pending, the concerned authority, being the 6th respondent is directed to consider the application dated May 29, 2023 and pass a reasoned order within two weeks from the date of communication of this order upon affording reasonable opportunity of hearing to all concerned including the petitioner and the private respondent, in accordance with law.

If the application filed by the petitioner is decided in the negative, necessary steps be taken by the authority under Section 10 of the Act of 1964 for demolition of the unauthorised construction forthwith.

With the above observation and direction this writ petition 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)