

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. No. 25018 of 2023

Smt. Jharna Pradhan (Maity) & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Biswaroop Bhattacharyya,
Mr. Priyabrata Thakur,
Ms. Sayani Das,
Ms. Seetama Biswas,
Ms. Ivey Bhattacharyya,
Mr. Snehasish Dey
.... for the petitioners

Mr. Soumitra Bandyopadhyay,
Mr. Priyabrata Batabyal
....for the State

- 1.** The petitioners challenge an order passed in an appeal within the contemplation of the Public Land (Eviction of Unauthorized Occupants) Act, 1962.
- 2.** The challenge is preferred primarily on two grounds - first, that the documents relied on by the appellate authority were not supplied to the petitioners, thereby violating the provisions of natural justice and that the appellate authority did not have jurisdiction to pass the order.
- 3.** The matter has a chequered career. In a nutshell, initially an order had been passed for

demolition of unauthorized construction under the 1962 Act against the petitioners. The petitioners had challenged the same in a writ petition but were relegated to the appellate authority under the Act.

4. Challenging the said order of the learned Single Judge, the petitioners had preferred an appeal, which was disposed of by remanding the matter to the first authority, directing the respondents to hand over copies of the reports relied on by the respondent authorities to the petitioners.

5. Subsequently, a similar order was repeated by the first forum. The petitioners filed two separate writ petitions. The first writ petition challenged primarily the notice of hearing given to the petitioners for such demolition order. In the second writ petition, the petitioners had challenged the immediate partial demolition of the property of the petitioners, despite the pendency of an appeal at the behest of the petitioners.

6. Orders were passed in both the said writ petitions, which ultimately were taken up in appeal before a Division Bench. Notably, before the Division Bench, a doubt was expressed with regard to the jurisdiction of the appellate authority. However, since the appellate authority had passed its order in the meantime, an appropriate challenge was to be

preferred by the petitioners in terms of the order of the said Division Bench.

7. In pursuance thereof, the present writ petition has been preferred. The first ground of challenge is that the two reports in the form of memoranda, which were relied on by the appellate authority dated September 19, 2023 and September 27, 2023, were not served on the petitioners to enable the petitioners to conduct the appeal properly. Secondly, it is argued by the petitioners that the District Magistrate did not have the authority to entertain the appeal, since the Commissioner of the Division is the appropriate authority within the contemplation of Section 7(1)(a) of the 1962 Act.

8. Upon hearing learned counsel for the parties, it transpires that there is nothing on record to establish that copies of the reports-in-question, which were relied on by the appellate authority lastly, were given at any point of time to the petitioners. Different reports of varying dates were relied on by the respondent authorities at various points of time. Although the previous reports were handed over, the last two reports on which the appellate authority based its judgment were not served, thus vitiating the hearing and the consequential order of the appellate authority.

9. Insofar as the jurisdiction of the appellate authority is concerned, learned counsel for the State has pointed out that it is the petitioners who preferred the appeal and, as such, they cannot take an objection to the jurisdiction of the said authority.

10. In any event, in view of the points raised by the petitioners, it would be appropriate if the petitioners are given a fresh opportunity, upon being served with copies of the reports-in-question, to conduct the hearing of the appeal afresh before the appellate authority.

11. Accordingly, W.P.A. No. 25018 of 2023 is disposed of by setting aside the impugned order dated October 04, 2023 passed by the District Magistrate, Purba Medinipur and directing the said authority to hear the appeal afresh, upon serving on the petitioners copies of all documents proposed to be relied on by the said authority before the hearing of the appeal is undertaken.

12. It will be open to the parties also to advance arguments regarding the jurisdiction and authority of the District Magistrate, Purba Medinipur, to take up the appeal within the contemplation of the 1962 Act, at the time of hearing of the appeal.

13. It is made clear that it will be open to the said authority to decide the appeal on the above

questions and on all other questions raised on law and facts, as the merits of the contentions of the parties have not been entered into by the Court. It is expected that the appeal shall be reheard and disposed of at the earliest, preferably by the end of this year.

14. There will be no order as to costs.

15. 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.)