

January 6, 2023
AD 1
Court No.1
SG

MAT 2032 of 2022
with
CAN 1 of 2022

Smt. Jharna Pradhan (Maity) and others
vs
The State of West Bengal and others

Mr. Subir Sanyal,
Mr. Balai Lal Sahoo,
Mr. Chandan Chakraborty, Advocates
....for the appellants

Mr. Nilotpal Chatterjee,
Mr. Subhendu Sengupta, Advocates
....for the State

This appeal is at the instance of the writ petitioners challenging the order of learned Single Judge dated 14.12.2022 whereby WPA 27572 of 2022 has been disposed of by taking note of fact that the remedy of appeal is available against the order impugned in the writ petition.

The appellants had approached the writ Court challenging the order dated 13.10.2022 passed by the collector and SDO, Contai under the provisions of West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 and directing the concerned authorities to get the government land in question vacated under the provisions of the Act within a period of a month from the date of the order. Otherwise action under Clause (a) of Section 4 of the Act was contemplated.

Learned Single Judge in the impugned order has noted that against the order, remedy of appeal is available under Section 7(1) to the collector. Accordingly, requisite directions have been issued in this regard.

The first issue raised by learned counsel for the appellants is that the eviction proceedings under the Act were initiated on the instruction of the Collector, therefore the remedy of appeal before the Collector is illusory remedy, hence, the writ Court ought to have examined the issue on merit. Responding to this, learned counsel for the State has pointed out that since the order is at the instance of Collector and SDO, Contai, the appeal will lie before the Divisional Commissioner and not before the District Magistrate. The above Stand of the State adequately takes care of the apprehension of the appellants and the ground does not survive.

The second ground raised by learned counsel for appellants is that in the impugned order the Collector and SDO has placed reliance upon the report of BL&LRO, Ramnagar-II dated 30.08.2022 and 19.10.2022 in respect of illegal occupation of unauthorised construction but a copy of the said report was not supplied to the appellants, therefore there was violation of the principles of natural justice. He has also pointed out that while passing the impugned order SDO had not considered the case of the appellants though during the course of personal hearing, documents were submitted before SDO.

A perusal of the impugned order clearly reveals that conclusion has been drawn by SDO on the basis of the report of BL&LRO, Ramnagar-II but undisputedly a copy of the said report has not been supplied to the appellants. The case of the appellant on merit has also not been considered.

Hence, we are of the view that the impugned order has been passed in violation of the principles of natural justice.

In the aforesaid circumstances, we set aside the order dated 13.10.2022 and remit the matter back to the Collector and SDO, Contai with a direction to supply a copy of the report of BL&LRO, Ramnagar-II noted above, thereafter take a fresh decision in accordance with law after giving an opportunity of hearing to the appellants.

It will be open to the appellants to file reply to the show-cause notice at the time of first hearing before SDO.

Having regard to the nature of controversy involved in the matter, we direct the SDO to conclude the proceedings as early as possible.

We make it clear that we have not entered into the merits of the matter and SDO will decide the issue in accordance with law without being influenced by observation, if any, made on merit in this order.

Accordingly, the present petition is disposed of.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]