

D/L. 5.
December 8, 2023.
MNS.

WPA No. 27391 of 2023

Radhagobinda Das and others
Vs.
The State of West Bengal and others

Mr. Swarup Paul,
Mr. Tarapada Das,
Mr. Puspam Das,
Mr. Gurusaday Dutta,
Mr. Anish Roy

... for the petitioners.

Ms. Ashmita Chakraborty

...for the State.

Dr. Madhusudan Saha Roy

...for the respondent nos. 10 and 11.

1. The petitioners challenge an order passed by the appellate authority directing removal of alleged illegal encroachment by the petitioners.
2. It is pointed out that upon an initial complaint by the private respondents, the matter saw several rounds of litigation.
3. By an order dated March 28, 2022 in WPA No. 4959 of 2022 it was observed, *inter alia*, that the specific details of the encroached land had not been mentioned, the status of the petitioners in respect of the land-in-question

was also not ascertained, nor was it found specifically as to whether the land was a Government land or not.

4. On such premise, the matter was ultimately relegated back to the appellate authority. Upon a further order being passed, a fresh writ petition was preferred, which also met with an order remanding the matter back to the appellate authority on the ground that the previous order of this Court had not been adhered to. Thereafter, the appellate authority passed the present impugned order, whereby certain particular plots have been held to be Government plots and removal of encroachment from the plots has been directed.
5. Learned counsel for the petitioners argues that the plots, which have been alleged to be encroached in the appellate authority's order, did not find place in the order of the Sub-Divisional Officer (SDO). Whereas the SDO specifically observed that there was encroachment with regard to roads running through the northern part of plot nos. 538 and 632 and eastern part of plot no. 538, which were within the purview of Highways Act,

1964 and directed to removal of encroachment in that regard, the appellate authority did not mention any of the said two plots, but passed its order directing removal of alleged encroachment regarding plot nos. 43/861, 43/862, 1066/6857 and plot no. 537.

6. Despite having so deviated in its entirety from the SDO order on the plots, the appellate authority found that there was no cogent reason to interfere with the order of the SDO and affirmed the same.
7. It is submitted that such palpable deviation between the two authorities' orders itself tantamounts to patent perversity.
8. It is further argued that although the initial enquiry report filed before the appellate authority was questioned by the concerned Additional District Magistrate, who directed a fresh enquiry to be held, no such enquiry report is reflected in the impugned order nor was any copy given to the petitioners.
9. Learned counsel argues that since the last order passed by the appellate authority, which has been impugned herein, also does not adhere to the specific observations by this

Court passed previously, the same is also bad on such count.

10. Learned counsel for the State contends that the initial complaint was lodged not with regard to plot nos. 538 and 632 but with regard to plot nos. 537, 685 and 862. It is argued that the submission of the petitioners that no further enquiry was held is misconceived. There has been a suppression of material facts inasmuch as a further enquiry was held, the notice of which has been annexed to the writ petition and the notice was taken into account by the appellate authority.

11. Upon such fresh enquiry having been held, a copy of the same was also served on the petitioners. On the basis of the said fresh enquiry report, the appellate authority came to its detailed observations, which cannot be faulted.

12. Learned counsel appearing for the private respondents adds to the arguments of the State that the appellate authority acted well within its jurisdiction in ascertaining from the enquiry report as to what are the exact plots which have been encroached by the

petitioners and passed the impugned order with regard to the same.

13. Insofar as the mention of the plots are concerned, it is argued that the revised report, as clarified subsequently, clearly takes into consideration the yardsticks enumerated on the previous occasion by this Court. Not only was the exact extent of encroached land mentioned therein, the status of the petitioners was also duly disclosed.

14. Upon a perusal of the materials annexed to the writ petition, it is palpable that the first authority, that is, the SDO, never mentioned the plots which have been enumerated to be encroached by the first appellate authority.

15. The clear finding of the SDO was that there were roads running through the northern part of plot nos. 538 and 632 and the eastern part of plot no. 538, which were, according to the SDO, within the purview of the Highways Act, 1964.

16. The SDO went on to observe that two different Governments roads were maintained by two different agencies of the Government, mainly PWD and PWD(Roads). In continuance thereof, it was directed by the SDO that the

representative of PWD remained present and commented that they have nothing to add and considering the same, the SDO directed the Assistant Engineer, PWD, Contai, to take appropriate steps to remove the encroachers where the encroachment had been made over the Government land along the road as mentioned therein.

17. While sitting in judgement over the said order of the SDO dated November 6, 2019, the appellate authority, by the impugned order and on the findings as made by him, ultimately observed that there was no cogent reason to interfere with the order dated November 6, 2019 passed by the SDO and upheld the said order.

18. Such affirmation of the palpably erroneous order of the SDO was itself vitiated in law. In the event the appellate authority was of the opinion that there was encroachment with regard to certain other plots than those which have been specifically mentioned by the SDO, that is, plot nos. 538 and 632, it was the incumbent duty of the appellate authority to remand the matter back to the SDO so that all

parties would have a further opportunity of dealing with the said allegations.

19. Otherwise, the effect was that the appellate authority acted as the original forum for all practical purposes, dealing with encroachment of different plots than mentioned in the complaint or the SDO's order, thereby depriving the parties of one appellate forum. Since the report furnished before the appellate authority apparently depicted a picture which was completely different from the order of the SDO, it opened a new vista of adjudication which necessitated the matter to be relegated to the first authority for a comprehensive hearing of the same.

20. The appellate authority, while observing that the encroachments were with regard to certain completely different plots than those mentioned by the first authority, could not in the same breath have affirmed the order of the first authority on such different plots.

21. Of course, insofar as the subsequent report being furnished is concerned, the respondents are justified in saying that the petitioners ought to have disclosed such furnishing of

subsequent report and service of a copy thereof on the petitioners.

22. Be that as it may, there is no occasion for this court to go into the merits of the contents of the said report.

23. Even otherwise, the respondents are justified in arguing on principle that the authorities had the jurisdiction to observe that there was encroachment with regard to different plots than which were mentioned by the SDO, if the report so suggests.

24. However, in view of the above observations, the appropriate forum for deciding such issue, since entirely new plots have come up in the order of the appellate authority, was the first authority, that is, the SDO. The appropriate course of action of the appellate authority, if it was of the opinion that the encroachment was of completely different plots than those mentioned by the SDO, was only to remand the matter back to the SDO for a further consideration and not to affirm the palpably faulty order of the SDO which, even as per the order of the first appellate authority, did not stand the scrutiny of law.

25. Thus, the conclusion of the first authority was contradictory to its findings.

26. Accordingly, WPA No. 27391 of 2023 is disposed of by remanding the matter back to the concerned SDO.

27. The said SDO, upon giving a fresh opportunity of hearing to both parties to produce necessary documents and giving adequate opportunity of hearing to both parties, shall pass a reasoned order on the complaint lodged by the private respondents alleging encroachment.

28. It is made clear that it will be open to the respondents to produce before the first authority, that is, the SDO, the enquiry report, which was furnished before the first appellate authority.

29. Upon the said report being proved in accordance with law to have been duly authored by the concerned authority, the SDO shall take the same into consideration while making the adjudication as directed above, if necessary upon giving opportunity to the petitioners to furnish a written rejoinder to the report or address the contents of the said report duly in accordance with law.

30. It is expected that the SDO shall dispose of the proceeding afresh as expeditiously as possible, positively within February 29, 2024.

31. There will be no order as to costs.

32. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)