

30th August,
2023
(AK)
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W.P.A 28862 of 2022

Abdul Matin Mondal
Vs.
The State of West Bengal and others

Mr. Golam Mostafa
Mr. Subir Sabud

...for the petitioner.

Mr. Asish Kumar Guha
Mr. Anirban Dutta

...for the State.

1. Learned counsel for the petitioner contends that the petitioner was given to understand before the First Authority that a confession of illegal encroachment would mitigate the circumstances for the petitioner.
2. However, upon such confession being recorded, eviction was directed against the petitioner. The challenge was preferred to the District Magistrate and Collector, Murshidabad, also to no avail to the petitioner.
3. It is submitted that the provisions of Section 10 of the West Bengal Highways Act, 1964 were not properly followed in the present case.
4. Learned counsel also places reliance on an unreported judgment dated May 16, 2023 passed by a learned Single Judge of this court in WPA 1609 of 2023.

5. Learned counsel appearing for the respondent authorities contends that the allegations made by the petitioner are incorrect, insofar as the petitioner himself admitted before the authorities that there was illegal encroachment on his part on Government land.

6. That apart, Section 10 has been fully complied with in the present case, as evident from the materials annexed to the writ petition.

7. It is submitted that, thus, there is no occasion to interfere with the impugned orders.

8. A perusal of the order of the Appellate Authority indicates that the appellant had denied simpliciter that there was any encroachment on public road or on State Highway and had alleged that the location of the shop room was at a long and safe distance. It was also alleged that the appellant took necessary permission from all local authorities.

10. However, nothing in the said order of the appellate court indicates that the petitioner had challenged the fact that the petitioner had admitted to illegal encroachment of Government land before the First Authority.

11. As rightly pointed by learned counsel for the respondent authorities, the District Magistrate and Collector, that is, the Appellate Authority, clearly recorded that the order of the Executive Engineer, Murshidabad Highway Division no. I reflected that the present

petitioner stated that whatever the said authority felt pertinent he should take recourse to and fully agreed with the fact that the petitioner had been running his shop upon Government land for long. The same was taken to be a clear admission on the fact of encroachment, on which premise the District Magistrate and Collector affirmed the order of the Executive Engineer. It is well-settled that a person disputing what transpired before a legal forum has to approach the same forum, preferably the same officer, for a recall of the recording of such disputed facts. Here, the petitioner never made any such approach before the First Forum.

12. Moreover, there is nothing on record to dispel the statutory presumption that the respondent authorities has duly complied with the provisions of Section 10 of the 1964 Act. In fact, there is no allegation to the effect that the provisions of the said Section were not complied with in the present case.

14. Insofar as the judgment of the coordinate Bench is concerned, in the said case the learned Single Judge had observed that the impugned order therein did not indicate whether the procedure under Sections 3(1) and 4(1) of the Act was followed. The writ petition was allowed on such ground alone. However, as opposed to the said case, there is no such material on record here to indicate that such provisions were violated.

16. In fact, the order of the Sub-Divisional Magistrate, Sadar, Berhampore clearly records that the petitioner had stated that he had been possessing the suit land by making a shop since long and that he was well aware about encroachment of P.W. (Roads) D.

17. The son of the petitioner had stated before the said authority that his father had filed a writ petition in the matter. However, no order was submitted in that regard before the authority.

18. The Sub-Divisional Magistrate had also considered the enquiry report of the BL & LRO, Nowda, Murshidabad addressed to the Assistant Engineer, Berhampore Highway sub-Division regarding the shop of the petitioner being situated just in front of the house of the complainants and under the jurisdiction of the PWD.

19. As such, the records indicate that the authorities below were fully justified in arriving at the conclusion that the petitioner was an illegal encroacher of P.W.D. land and passed the orders within the purview of law.

20. No irregularity or illegality in the decision-making process has been made out by the petitioner sufficient to prompt the court to interfere with the impugned orders.

21. Since the petitioner submits at this juncture that the petitioner shall remove the encroachment within seven days from date, on humanitarian considerations, a week ought to be given to the petitioner to so remove.

22. Accordingly, WPA 28862 of 2022 is disposed of without interfering with the impugned orders of the authorities but restraining the respondents from evicting the petitioner and/or removing the encroachment of the petitioner on the disputed land till September 8, 2023.

23. The petitioner shall remove the encroachment and make over vacant possession in favour of the respondents within such period. In default, it will be open to the respondent authorities to implement the eviction order impugned herein in due process of law.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)