

08.02.2023
rc/ct.no.10
Item No.04

WPA No. 29143 of 2022
With
CAN No. 1 of 2023

Mr. Swarup Paul
Mr. Tarapada Das
Mr. Anish Roy
Mrs. Soma Chakraborty ...for the petitioner

Mr. Joyak Kumar Gupta
Mr. Nandadulal Bandyopadhyay
...for the respondents no.10 & 11

Mr. Tapan Kumar Mukherjee
Mr. Bipin Ghosh
Mrs. S. Mukherjee ...for the State

By consent of the parties the writ petition is treated as on day's list and taken up for consideration along with the application being CAN No. 1 of 2023.

Heard learned counsels appearing for the parties.

Learned counsels for the private respondents seeks an order vacating the interim order granted by this Court vide order passed on 29th December, 2022 on the ground that the petitioners have admitted in their written statement filed before the Civil Court in Title Suit between the parties that they have their shop rooms on PWD road and are ready to surrender the said land if it is required by the PWD for the purpose of extension of the road or for any other public purpose.

Pursuant to an order passed by this Court on 7th September, 2021 in WPA No. 13088 of 2021 the District

Magistrate, Purba Medinipur passed an order on 22nd February, 2022 directing the Sub-Divisional Officer, Egra to take all measures for removal of all the encroachments made by the encroachers on the Government land in question. The order was passed on the anvil of a report submitted by the Block Land and Land Reforms Officer, Egra-II on 21st December, 2021. The order was assailed by the writ petitioners herein before this Court and by an order passed on 28th March, 2022 in WPA No. 4959 of 2022 a coordinate Bench of this Court recorded that the order impugned suffers from errors. The relevant portion of the order is set out herein below:-

“It is prima facie seen from the order impugned that the specific details of the encroached land have not been mentioned in the said order, nor has it been ascertained as to what is the status of the petitioners in respect of the land-in-question. Moreover, it does not appear that either of the forums below returned any finding specifically on the question as to whether the land is a Government land or not.”

By an order passed on 10th November, 2022 the Court directed the District Magistrate, Purba Medinipur to rehear the parties concerned and decide the matter afresh in accordance with law upon considering the material available before him as expeditiously as possible.

In compliance with the order, the District Magistrate, Purba Medinipur passed the order impugned in the present writ petition, on 7th December, 2022.

On plain reading of the order passed on 7th December, 2022 it appears that the order is identical to the earlier order passed on 22nd February, 2022 and no fresh consideration has been made by the District Magistrate, Purba Medinipur in passing the said order. The District Magistrate, Purba Medinipur has not found it necessary to comply with the direction/observation made by this Court in the order passed on 28th March, 2022 and has, for reasons best known to him, chosen to reiterate the findings made by him in the earlier order including the report of the Block Land and Land Reforms Officer submitted on 21st December, 2021. Without spending more time on this, it can be held that the order impugned passed on 7th December, 2022 being made in ignorance of the order of this Court, is liable to be set aside.

The order dated 7th December, 2022 is accordingly set aside. The District Magistrate, Purba Medinipur being the 2nd respondent herein, is directed to rehear the parties and pass a reasoned order upon making fresh enquiry over the matter in terms of the observation of this Court in the order passed on 28th March, 2022 and upon affording reasonable opportunity of hearing to both the parties, in accordance with law.

The parties are at liberty to place relevant documents before the concerned authority in support of their respective contention at the time of hearing.

The 2nd respondent is further directed to conclude the hearing within 4 weeks from the date of communication of this order and communicate such order to the parties within a week thereafter.

With the above observations and directions this writ petition being WPA No. 29143 of 2022 is disposed of.

The connected application being CAN No. 1 of 2023 is also disposed of accordingly.

There shall be, however, no order as to costs.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Suvra Ghosh,J)