

10.04.2024

Ct. no.654

Sl. Nos.200

SS

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)**

**WPA 2873 of 2023
(specially assigned)**

**Fakir Amir
Vs.
State of West Bengal & Ors.**

Mr. Sandipan Banerjee
Mr. Arijeet Bhattacharjee
..for the petitioner

Mr. Ansar Mondal, Ld. AGP
Ms. Somashree Dey
..for the State

Report in the form of affidavit filed on behalf of the respondent no.4 is taken on record. Copy served.

Learned advocate for the petitioner submits that the petitioner will not file any exception to the aforesaid report.

By the present writ petition the writ petitioner has sought for recession/cancellation and/or withdrawal of the order dated 6th December, 2022 passed by the Executive Magistrate at Haldia, Purba Medinipur in MP Case No.1905 of 2022.

The petitioner along with his brother Gulzar Amir purchased a plot of land within R.S. Dag No.316, under Mouza Rajchak, within Police Station Mahishadal, District Purba Medinipur. Upon complaint of the private party alleging of encroachment on the P.W.D. land the case was initiated before the Executive Magistrate, Haldia, Purba Medinipur under the West Bengal Highways Act, 1964 being M.P. Case No.1905 of 2022.

The petitioner never encroached any portion of P.W.D. land. However, the learned Executive Magistrate without taking into consideration such aspect on 6th December, 2022 has passed order for removal of encroachment. Challenging the said order, the petitioner has filed the present writ petition.

Mr. Sandipan Banerjee, learned Advocate for the petitioner submits that the petitioner has never encroached any portion of the P.W.D. land and as such, the order for removal of encroachment from the land of P.W.D. (Roads) does not arise. He seeks for cancellation of such order.

In reply to the contention raised on behalf of the petitioner, Ms. Somashree Dey, learned Advocate for the State-respondent submits that pursuant to the order passed in writ petition being WPA 11646 of 2021 a proceeding was initiated and hearing was held by the Executive Engineer, Tamluk Highway Division, Public Works (Roads) Directorate upon notice to all the concerned. The petitioner at the time of hearing has admitted of encroachment upon the Government land. The Executive Engineer after considering the demarcation report of the Block Land and Land Reforms Officer, Mahishadal, Purba Medinipur has come to a definite finding that there has been encroachment within the Government land belonging to the P.W.D. (Roads) in front of *rayat* plot No.316 and directed for removal of such encroachment. Thereafter, the Executive Magistrate,

Haldia on 6th December, 2022 has ordered for removal of encroachment which does not call for interference. She submits for dismissal of the writ petition.

In W.P.A. 11646 of 2021 filed by one Smt. Astami Rani Sahu grievance was raised with regard to unauthorised construction over land of the P.W.D. Roads (Highway) obstructing her egress and ingress. A coordinate Bench of this Hon'ble Court while disposing of the writ petition WPA 11646 of 2021 on 25th March, 2022 passed the following order :-

“ Having considered the submissions made on behalf of the parties and material on record, the writ petition is disposed of directing the 3rd respondent to consider and dispose of the representation submitted by the petitioners dated 12th April, 2021 within a period of three weeks from the date of communication of this order after giving reasonable opportunity of hearing to all the interested parties including the petitioners and the private respondent, in accordance with law.”

Pursuant to the order passed in the writ petition WPA 11646 of 2021 notices were issued to the petitioner as well as to all the concerned parties. Upon hearing and also considering the demarcation report of the Block Land and Land Reforms Officer, Mahishadal, the Executive Engineer, Tamluk Highway Division held that the private respondents have occupied/encroached the Government land within plot No.337/429, J.L. No.156 Mouja Rajchak in front of *rayat* plot in question and vide order dated 27th April, 2022 directed for removal of such encroachment. It is relevant to note that the petitioner before the authority

concerned had admitted of such encroachment over the Government land. Thereafter, the Assistant Engineer, Haldia Highway Sub-Division, P.W. (Roads) Department vide its letter dated 18th May, 2022 requested the Executive Magistrate for making necessary arrangement of removal of unauthorised encroachment. Upon consideration of the entire aspect the Executive Magistrate, Haldia Sub-Division, Haldia, Purba Medinipur by its order dated 6th December, 2022 directed for removal of encroachment, if the same is not removed within a stipulated period.

Considering the aforesaid fact, this Court finds that there is no illegality and/or irregularity in the action of the Executive Magistrate, Haldia in passing the impugned order.

Accordingly, the writ petition being **W.P.A. 2873 of 2023** stands dismissed.

All connected applications, if any, stand dismissed.

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

Interim order, if any, stands vacated.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)