

05.02.2024
rc/ct.no.10
Item No.03-06

WPA No. 5448 of 2023
Mursed Ali Khan & Ors.
Vs.
The State of West Bengal & Ors.
with
WPA No. 4679 of 2023
and
CAN No. 1 of 2023
Alem Ali Khan & Ors.
Vs.
The State of West Bengal & Ors.
with
WPA No. 4801 of 2023
and
CAN No. 1 of 2023
Satyanarjan Barik
Vs.
The State of West Bengal & Ors.
with
WPA No. 5264 of 2023
Rotary Club of Contai & Ors.
Vs.
The State of West Bengal & Ors.
with
WPA No. 9551 of 2023
Avijit Sahu & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Jamiuddin Khan	
Mr. Sayanti Sengupta	...for the Petitioners (in WPA No. 5448 of 2023)
Mr. Chandi Charan De	
Mr. Anirban Sarkar	...for the State (in WPA No. 5448 of 2023 and WPA No. 5264 of 2023)
Mr. Amitesh Banerjee	
Mr. Suddhadev Adak	...for the State (in WPA No. 4679 of 2023)
Mr. Ashim Kumar Ganguly	
Mr. Subrata Dasgupta	...for the State (in WPA No. 4801 of 2023)
Mr. Debjit Mukherjee	...for the State (in WPA No. 9551 of 2023)
Mr. Nilanjan Adhikari	...for the respondent no. 8 (in WPA No. 5448 of 2023)
Mr. Partha Deb Barman	

Mr. B.K.Samanta	...for the Petitioners (in WPA No. 5264 of 2023)
Mr. Suman Saha	...for the Petitioner (in WPA No. 4801 of 2023)
Mr. Soumen Kr. Dutta Mr. Sabyasachi Bhattacharjee	...for the Petitioners (in WPA No. 9551 of 2023)

By consent of the parties WPA No. 4801 of 2023 along with CAN No. 1 of 2023 is treated as on day's list and the same is taken up for hearing along with other writ petitions.

Today is fixed for extension of interim order. Since it appears that these writ petitions can be disposed of, they are taken up for consideration by consent of the parties.

Heard learned counsels for the parties.

The order passed by the Collector and Sub-Divisional Officer, Contai on February 17, 2023 is assailed in the writ petitions. As appears from the order impugned the order was passed in compliance with the order of this Court passed in a Public Interest Litigation (in brief, "PIL") being WPA(P) No. 438 of 2022 on September 26, 2022. The allegation of the petitioners therein was that on a public land classified as "bastu" an unauthorised and illegal construction was made by the local leaders of one political parties. The petitioners submitted representations before the concerned authority in that regard on August 08, 2022 which was directed to be disposed of by the concerned authority, by the Hon'ble Division Bench. The Hon'ble Division Bench further held that if any unauthorised

construction on the public land was found then the 2nd respondent therein would take expeditious appropriate steps in accordance with law to remove the same.

The submission made on behalf of the petitioners herein is two fold:-

Firstly, since the Hon'ble Division Bench, by the order passed in the PIL, directed the authority to consider the representation submitted by the petitioners therein and further directed demolition of the unauthorised construction as referred to in the representation, the Sub-Divisional Officer could not have passed the order impugned in compliance with the said order and direct removal of all encroachments from the plot in question, which was not the direction given by the Hon'ble Division Bench. Secondly, the petitioners were not granted an opportunity of hearing before the impugned order was passed.

The Hon'ble Division Bench, in the PIL, has in no uncertain terms directed removal of ***any unauthorised construction on the public land*** and has not restricted the order to the unauthorised construction of the building as alleged by the petitioners therein. The Sub-Divisional Officer has, therefore, rightly directed removal of encroachers from the land in question in compliance with the said order. The petitioners allege that the order was passed without granting them an opportunity of hearing.

In view of the above, this Court is inclined to hold that since the order impugned *prima facie* discloses that the petitioners were not granted an opportunity of hearing by the authority when the order was passed, justice demands that the petitioners be granted such opportunity by the authority before any such order is passed.

The order impugned dated February 17, 2023 is accordingly set aside.

As the Hon'ble Division Bench directed the District Magistrate and Collector, Purba Medinipur to deal with the issue, the 2nd respondent herein is directed to revisit the issue in terms of the order passed by the Hon'ble Division Bench on September 26, 2022 in WPA(P) No. 438 of 2022 and pass a reasoned order within two months from the date of communication of this order upon affording reasonable opportunity of hearing of all concerned including the petitioners, in accordance with law.

With the above observations and directions these writ petitions and connected applications are disposed of.

There shall however be no order as to costs.

Since no affidavit is invited, the allegations contained in the petitions are deemed not to be admitted.

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

(Suvra Ghosh,J)