

06.02.2024

Ct. no.654

Sl. No.74

ss

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

W.P.A. 5514 of 2023
(specially assigned)

Sri Uttam Ghosh
Vs.
The State of West Bengal & ors.

Mr. Tapash K. Bhattacharya
Mr. Aviroop Bhattacharya
... for the petitioner

Mr. Chandi Charan De, Ld. AGP
Mr. Anirban Sarkar
... for the State

Mr. Debasish Kundu
... for the respondent no.8

Affidavit of service filed on behalf of the petitioner
is taken on record.

This writ petition has been filed under Article 226
of the Constitution of India for setting aside order dated
30th August, 2022 passed by respondent no. 3, the Sub-
Divisional Officer, Sadar, Nadia and order dated 13th
December, 2022 passed by respondent no. 2, the District
Magistrate, Nadia in Appeal under Section 7 of the West
Bengal Public Land (Eviction of Unauthorised Occupants)
Act, 1962 (hereinafter referred to as “the Act of 1962”).

Earlier a writ petition being No. WPA 9864 of 2022
was filed by respondent no. 8 herein for consideration of
his representation for vacating of Government land

adjacent to his purchased property encroached by the private respondents, one of whom is the petitioner herein. A Co-ordinate Bench of this Court while disposing of the writ petition passed the following direction :

“Accordingly, WPA No.9864 of 2022 is disposed of by directing the Respondent No.5, that is, the Sub-Divisional Officer, Krishnagar, to decide the representation given by the petitioner, as annexed at page-48 (Annexure-P8) of the writ petition, in accordance with law and upon giving adequate opportunity of hearing to the petitioner as well as the private respondents and all others concerned, if any, and ascertain whether the occupation and construction of the private respondents, allegedly made on Government land, is unauthorized or unlawful. Such exercise shall be concluded as expeditiously as possible, preferably within eight weeks from the date of communication of this order to the Respondent No. 5, that is, the Sub-Divisional Officer, Krishnagar.

In the event the Respondent No. 5 is of the opinion, upon such inquiry as necessary, that unauthorized structure or unauthorized encroachment has occurred on any Government land, the respondent no.5 shall take immediate consequential steps thereafter for initiating due proceedings under the appropriate provisions of the Public Land (Eviction of Unauthorized Occupants) Act, 1962 and/or any other statute, if applicable. The respondent no.3 shall act on a server copy of this order, coupled with the communication by the learned Advocate for the petitioner, without insisting upon prior production of a certified copy thereof, for the purpose of compliance.”

It is informed by the learned Advocate for the respondent no.8 that since such direction as above was

not complied with, a contempt application being CPAN 720 of 2022 was filed, which was dropped after the State-authorities complied with the order.

On 30th August, 2022, the Sub-Divisional Officer, Sadar, Nadia, respondent no. 3 passed an order for removal of the encroachment. Such order was challenged before the Appellate Authority i.e. District Magistrate, Nadia in appeal being No.1 of 2022 under Act of 1962. The Appellate Court upheld the order passed by the Sub-Divisional Officer, Sadar, Nadia, respondent no. 3 for removal of encroachment. Being aggrieved by the above said orders, this writ petition has been filed by the petitioners.

Mr. Tapash K. Bhattacharya, learned Advocate for the petitioner submits that direction given in the previous writ petition was to initiate a proceeding. However, no such proceeding was initiated by Sub-Divisional Officer, Krishnagar, Nadia in terms of Section 3 of the Act of 1962 and without assigning any reason passed an order of removal of encroachment. In appeal also the District Magistrate, Nadia failed to assign any reason while affirming the order passed by the Sub-Divisional Officer. Relying on the decision of the Hon'ble Supreme Court passed in ***Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota versus Shukla and Brothers*** reported in ***(2010) 4 SCC***

785, he submits that giving reasons furthers the cause of justice as well as avoids uncertainty and therefore, if an order is not supported by reason that is required to be set aside. In light of his aforesaid submission, he prays that the impugned orders passed by the respondent no.3, Sub-Divisional Officer, Krishnagar, Nadia and respondent no.2, District Magistrate, Nadia should be set aside.

Mr. Debasish Kundu, learned Advocate for the respondent no.8 in reply to the contentions raised on behalf of the petitioner, submits that it is clear from the impugned order of the Sub-Divisional Officer, Krishnagar, Nadia that the petitioner was directed to file show-cause. The authority concerned also passed direction upon the Block Land and Land Reforms Officer, Krishnaganj for causing enquiry and after due consideration of the enquiry report and hearing the parties and the case made out in the show-cause reply, the order of removal has been passed, which has been affirmed by the appellate authority. Thus, the ground raised that no proper proceeding was initiated or the order is bereft of reasons, is meritless. He also indicates that the aspect of encroachment is an admitted position as is evident from paragraph 16 of the writ petition. In light of his aforesaid submission, he prays that the impugned orders passed by respondent no.3, Sub-Divisional Officer, Sadar, Nadia

and also by respondent 2, District Magistrate, Nadia in appeal should be affirmed in the interest of justice.

Mr. Chandi Charan De, learned Additional Government Pleader also submits that in compliance to the order of this Court, appropriate proceeding was initiated giving opportunity to the petitioner to file a show-cause reply. Further, necessary report was also called for from Block Land and Land Reforms Officer, Krishnaganj which was placed before the authority concerned and after considering the report as well as the case made out in the show-cause reply, the Sub-Divisional Officer, Krishnagar has passed a reasoned order, which has also been affirmed in appeal. He seeks that the impugned orders be affirmed and the writ petition be dismissed.

At the outset upon going through the order of the District Magistrate, Nadia, it manifests that in compliance to the order of this Court passed in W.P.A. 9864 of 2022 the Sub-Divisional Officer, Sadar, Nadia initiated a proceeding under Act of 1962. Thus, the contention advanced on behalf of the petitioner that no proceeding was initiated does not stand to reason.

Now coming to the other aspect, which has been raised in the present writ petition, is that the impugned orders are liable to be set aside since those are bereft of reasons. Mr. Bhattacharya, learned Advocate for the

petitioner relying on *Shukla and Brothers (supra)* tried to impress upon the court that as the orders under challenge does not contain reasons, those orders should be set aside. In order to appreciate the issue it would be apposite to reproduce the impugned orders of respondent no.3, Sub-Divisional Officer, Sadar, Nadia and respondent no.2, District Magistrate, Nadia as follows.

Impugned order of respondent no.3 dt. 30.08.2022 reads as under -

“During hearing Pvt. Respondent Mantulal Ghosh, s/o Lt Gopeswar Ghosh, vill+P.O.: Mathurapur, PS:Krishnaganj, Dist: Nadia & Uttam Ghosh, s/o Nitya Gopal Ghosh, vill: Majdia Ghoshpara, PO: Majdia, PS: Krishnaganj, Dist: Nadia appeared and submitted show cause reply. BL&LRO, Krishnaganj submitted report his vide his memo no.:LAW/383/BLLRO/KNJ/22, Dt-29.08.22.

On perusal of record & enquiry report submitted by the BL&LRO, Krishnaganj, it appeared that 0.145 decimal of Government Land in Plot No.:438/2668 of Mouza Majdia, JL No.-59 has been encroached and as per provision of Public Land (Eviction of Unauthorised Occupants) Act, 1962 is required to be removed.

Hence, it is ordered that 0.145 decimal of Government Land in Plot No.:438/2668 of Mouza Majdia, JL No.-59 which is recorded in Colector's Khatian be removed, immediately.”

It appears that the Sub-Divisional Officer, Sadar, Nadia, respondent no. 3 has passed order for removal of encroachment on the basis of the enquiry report of Block Land and Land Reforms Officer, Krishnaganj which

depicted of encroachment of 0.145 decimal of Government land in Plot No.438/2668 of Mouza Majdia, J.L. No.59.

Impugned order of respondent no.2 dt.13.12.2022 reads as under -

“During hearing I have examined all the papers/documents submitted by both parties. I also have gone through the field enquiry report submitted by Block Land & Land Reforms Officer, Krishnaganj and gone through the lower case record along with all annexures.

I have heard the rival contention of both parties represented through their Ld. Advocates. On perusal of field enquiry report it is crystal clear that the present appellant has encroached plot no.438/2668 of Mouza Majdia, J.L. No.59 with an area of 0.145 dec., which belongs to Collector’s khatian. On query appellant also corroborates the field enquiry report submitted by concerned Block Land & Land Reforms Officer.

So, having regards to the facts and circumstances and on examination of materials on record, I do not find any reason to interfere with the order dated 30.08.2022 passed by the Sub-Divisional Officer, Sadar, Nadia.

As such, the impugned order is upheld. Sub-Divisional Officer, Sadar, Nadia is directed to take necessary action in this regard at an early date as per provision of law.”

The District Magistrate, Nadia, respondent no. 2 in appeal while upholding the order of Sub-Divisional Officer, Nadia has also considered the enquiry report of the Block Land and Land Reforms Officer, Krishnaganj and has come to a definite finding that there is encroachment in the aforesaid land.

Thus, it is found that such exercise of the respondent nos.2 and 3 cannot be termed to be an order bereft of reasons.

So far as the decision of Hon'ble Supreme Court in *Shukla and Brothers (supra)* is concerned, it is found that challenge was made to the judgment passed by the High Court of Judicature for Rajasthan Bench at Jaipur in S.B. Sales Tax Revision petition. Since the impugned order assailed before the Hon'ble Supreme Court was bereft of reasons, the Hon'ble Court set aside the said order. Whereas in the case at hand, it is already held that the impugned orders under challenged is not bereft of reasons. Thus, the facts involved in the cited decision are distinguishable and ratio does not apply to the present case.

In view of the above, the writ petition being **W.P.A. 5514 of 2023** stands dismissed.

All connected applications, if any, stand dismissed.

Interim order, if any, stands vacated.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)