

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction

Before:

The Hon'ble Mr. Justice Jay Sengupta

WPA 9225 of 2023

Swapna Bhadra
Vs.
The State of West Bengal & Ors.

For the Petitioner	:	Mr. Rishav Singh, Mr. Sagar Mishra, Ms. Khushi Gupta, Mr. Soumalya Dutta.
For the State	:	Ms. Sonal Sinha, Ms. Shabnam Farooqui.
For the respondent no.6.	:	Mr. Sk. Jahadar Alam, Mr. Sakya Maity.
Heard on	:	14.05.2024
Judgement on	:	14.05.2024

Jay Sengupta, J. :

1. This is an application under Article 226 of the Constitution of India praying for direction upon the police authorities to remove the mobile tower and any other equipment standing on the petitioner's land at Nehru Market, North 24- Parganas.

2. Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is a senior citizen and is the owner of the land in question. In 2008, she had entered into an agreement with the respondent nos.5 and 6 for installation of a mobile tower at her property. The agreement was valid for 12 years. The private respondents did not pay all the dues. But, the petitioner has not approached this Court with the present petition for recovery of such dues. The private respondents had left the structure there, which is now inoperative and is in a dilapidated condition. Despite requests, the private respondents are not removing the same. At any point of time, the structures may fall off and cause fatal injuries to the locals. The petitioner may become unduly liable as the owner of the land. Reliance is placed on an order passed by a Co-ordinate Bench of this Court dated 15.09.2022 in *WPA 5614 of 2022*.

3. Learned counsel appearing on behalf of the respondent no.6 submits as follows. There is an arbitration clause in the agreement. Instead of approaching the Arbitral Tribunal, the petitioner has moved this Court only to harass the private respondents. The towers are not in such a condition that they may cause any harm to others and therefore, need not be removed. Reliance is placed on a decision of this Court passed on 28.08.2023 in *WPA 10316 of 2023*.

4. Learned counsel appearing on behalf of the State relies on the report filed earlier. According to him, enquiry revealed that the tower is indeed in a bad condition.

5. Although the learned counsel for the private respondents had earlier been granted an opportunity to seek instructions from his client including about the time that his client would take to remove the dilapidated structure from the land of the petitioner, now the learned counsel submits that the private respondent no.6 is not going to remove the structure from the land of the petitioner.

6. Admittedly, the agreement between the private parties had lapsed quite some time ago. The petitioner is not claiming her dues in terms of the agreement before this Court. Her only concern is that as the tower is in a dilapidated condition, the same might fall and cause fatal injuries to the locals or the passers-by.

7. It appears that in the matter concerning the same private respondent, a Co-ordinate Bench of this Court in quite similar circumstances, in WPA 5614 of 2022 directed removal of such tower, which was causing danger to the property and life of human beings and was in a dilapidated condition.

8. On the other hand, in the order dated 28.08.2023 passed in WPA 10316 of 2023,, this Court did not come across a similar situation. There, the term of the

agreement had only expired. It was nobody's case there that the structure was in a dilapidated state and could have caused harm to the locals.

9. A report of the State also makes it clear that the tower in question is in a bad condition.

10. Therefore, this Court has no other option, but to direct the respondent no.6 to forthwith remove the dilapidated structure from the land of the petitioner as otherwise, it might fall off and cause fatal injuries to the local inhabitants.

11. Accordingly, the respondent no.6 is directed to remove the dilapidated structure from the land of the petitioner within ten days from the date of communication of this order at their own cost. The respondent shall take all precautions so that no harm or damage is done to the locals.

12. The local police authorities of the Jagadad Police Station shall render all necessary help, when asked for by the respondent no.6 and stand guard at the time of demolition for ensuring peace.

13. With these observations, the writ petition is disposed of.

14. Parties shall act on a server copy downloaded from the official website of this Court.

(Jay Sengupta, J.)

Sl. 01/NB