

Court No. 2  
**12.8.2024**  
(Item No. 14)  
(AB)

**IN THE HIGH COURT AT CALCUTTA**  
**Constitutional Writ Jurisdiction**  
**Appellate Side**  
**W.P.A. 11199 of 2024**

Anupam Mondal  
VS  
The State of West Bengal & Ors.

Mr. Sarwar Jahan  
Mr. Sudipta Maiti  
Ms. Pritikana Gantait  
.... For the petitioner  
Mr. Chandi Charan De  
Mr. Anirban Sarkar  
.... For the State  
Mr. Mrinal Kanti Ghosh  
Mr. Kartik Chandra Kapas  
Mr. Chandranath Sarkar  
.... For respondent Nos. 8 & 9

Affidavit of service filed in Court today, is  
taken on record.

Mr. Sarwar Jahan, learned counsel appears for  
the petitioner.

Mr. Chandi Charan De, learned Additional  
Government Pleader appears for respondent Nos. 1 to  
7.

Mr. Kartik Chandra Kapas, learned advocate  
appears for respondent Nos. 8 and 9.

Through this writ petition the petitioner has  
impugned the order dated **September 13, 2023**  
passed by the respondent No. 2 pursuant to the  
erstwhile direction of the co-ordinate bench dated  
**January 11, 2023** passed in **W.P.A. 27041 of 2022,**  
**annexure P-8** at **page 67** to the writ petition.

The petitioner complains of an alleged  
encroachment and unauthorized construction on the

P.W.D. land in front of the land of the petitioner. Upon hearing the respondent No. 2 while passing the impugned order, as it appears from the impugned order dated **September 13, 2023** the authority failed to assess whether the particular land on which encroachment has been alleged is a private land or P.W.D. land. The respondent No. 2 in its impugned order has observed, inter alia, that it is found another rayat land ***may have*** exist in front of **plot No. 1215**. This observation itself ex facie shows that, the impugned order was without application of mind and without going through the actual land records available on record.

The impugned order, therefore, suffers from serious infirmity in the decision making process.

The learned counsel appearing for the private respondents submits that, this impugned order was passed in presence of the surveyors of the parties who had surveyed the plot of land. Petitioner's surveyor surveyed the land and the surveyor appointed by the private respondents also surveyed the land. The respondent No. 6 has caused its own survey.

After hearing the rival contentions of the parties and upon perusal of the materials on record, this Court is also of the considered view that, the impugned order is totally vague and the finding is based upon no conclusive materials. The land record exists must show the character and nature of land for

every piece of land. If the relevant record is brought before the decision making authority, such decision making authority should arrive at its definite finding with reasons while deciding the issue. No such definite finding is there in the impugned order.

For the foregoing reasons and discussions the impugned order dated **September 13, 2023** is not tenable in law and the same stands **set aside** and **quashed**.

The parties confirm this Court that, the respondent No. 3 is the appropriate authority to decide the issue.

Accordingly, the petitioner shall serve a copy of this order forthwith upon the respondent No. 6. The respondent No. 6 then upon issuing a prior notice to the petitioner, private respondent Nos. 8 and 9 shall cause a physical inspection of the subject land and then shall demarcate the same in presence of the petitioner and the private respondents in accordance with law. After demarcation the respondent No. 6 shall specifically arrive at a finding with reasons whether the subject plot of land is a private land/rayati land or P.W.D. land. The respondent No. 6 then shall forward his report with his reasoned finding and the copy of the site plan to the petitioner, private respondents and the respondent No. 3.

The entire exercise as directed herein shall be carried out and completed by the respondent No. 6 positively within a period of **five weeks** from the date of communication of this order.

The respondent No. 3 then upon issuing a prior notice to the petitioner and the private respondents and after giving them an opportunity of hearing shall pass its reasoned order with his finding with reasons whether there is any encroachment on the subject land or not.

The respondent No. 3 shall carry out and complete the entire exercise positively within a period of **four weeks** from the date of receiving the report and site plan from the respondent No. 6.

In the event, the reasoned order confirms encroachment then the respondent No. 3 shall initiate appropriate proceedings to give an immediate effect to the said reasoned order in accordance with law but positively within a period of **six weeks** from the date of the said reasoned order to be passed.

It is made clear that, this Court has not gone into the merits of the rival claims of the petitioner and the private respondents and they shall be free to urge all their points by relying upon whatever records and documents they wish to rely upon before the respondent No. 3.

This order shall not create any right or equity in favour of the petitioner or in favour of the private

respondents, if they do not succeed to their respective contentions strictly in accordance with law.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have admitted by the respondents.

With the above observations and directions this writ petition **W.P.A. 11199 of 2024** stands **disposed of**, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

**(Aniruddha Roy, J.)**