

26 19.9.2024
Sc Ct. no.2

WPA 11978 OF 2024

Debika Dey Hazra & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Sanjib Das
Sk. Abul Hasan.

... For the Petitioners

Mr. Soumitra Bandyopadhyay
Mr. Priyobrata Batabyal
Ms. Sucheta Banerjee.

.... For the Respondent
Nos. 1 to 12

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

Mr. Sanjib Das, learned advocate appears for the
petitioners.

Mr. Priyabrata Batabyal, learned State advocate led
by Mr. Soumitra Bandyopadhyay, learned State counsel
appearing for the respondent nos. 1 to 12 files a report in
the form of affidavit affirmed on August 4, 2024 pursuant
to the direction of a coordinate Bench dated **June 19,**
2024, is taken on record. Copy has been served upon
the petitioners.

Mr. Sanjib Das, learned advocate appearing for the
petitioners submits that, the petitioners shall not use any
exception to the said report and the petitioners shall
proceed on the basis of the existing record.

None appears for the private respondent nos. 13 to 16, despite notice.

The petitioners complain of unauthorized and illegal construction and encroachment of a public land at the behest of the private respondent nos. 14 to 16. The petitioners submitted a representation dated **March 19, 2024, Annexure-P3 at page 27** to the writ petition before the respondent no.8, the same has not yet received any attention.

From the report filed by the respondent nos.4, 5 and 7 today in Court it appears that, the encroachment of public land has been confirmed from the record maintained by the respondent no.7. However, the report suggests that, the concerned public land may belong to the **Irrigation and Waterways Department** of the State.

Even if the land whereupon the encroachment is alleged belongs to the **Irrigation and Waterways Department**, there is no doubt in the mind of this Court that, the land belongs to the State and not a private land.

In view of the above, to subserve justice, following directions are passed:

- i) the petitioners shall serve a copy of this writ petition along with a copy of the report affirmed on behalf of the respondent no.4, 5 and 7 filed today in Court and a copy of today's order on the **Executive Engineer – I, Lower Damodar Construction Division,**

Fuleswar, Uluberia, Howrah within **three working days** from date;

- ii) the respondent no.5 upon issuing a prior notice of hearing of at least **seven days** to the petitioners, the private respondent nos. 14 to 16, the Executive Engineer – I, Lower Damodar Construction Division, Fuleswar, Uluberia, Howrah and after giving them an opportunity of hearing shall decide the issue on the basis of the case made out in the writ petition by passing a reasoned order in accordance with law;
- iii) the entire exercise, as directed above, shall be carried out and completed by the respondent no.5 positively within a period of **eight weeks** from the date of communication of this order;
- iv) the reasoned order then shall be communicated to the petitioners, respondent no.6, respondent nos. 14 to 16 and the Executive Engineer – I, Lower Damodar Construction Division, Fuleswar, Uluberia, Howrah positively within a further period of **one week** from the date of the said reasoned order to be passed;
- v) it is made clear that, this Court has not gone into the merits of the rival contentions of the parties and the petitioners and the private

respondents shall be at liberty to urge whatever points they wish to urge by relying upon whatever records and documents they wish to rely upon in the light of the said report filed by the respondent nos. 4, 5 and 7 confirming the encroachment of the concerned State land before the respondent no.5;

- vi) if the reasoned order to be passed by the respondent no.5 further confirms the encroachment as alleged by the petitioners on the State land, the appropriate State authorities shall take all necessary and consequential steps to give an immediate effect to the said reasoned order to be passed by the respondent no.5 in accordance with law but positively within a period of **six weeks** from the date of communication of the said reasoned order to such appropriate State authorities.

It is made clear that, this order shall not create any right or equity in favour of the petitioners or the private respondents, if they do not succeed to their respective claims in the light of the report submitted before this Court by the respondent nos. 4, 5 and 7 confirming

encroachment of State land strictly in accordance with law.

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

The petitioners shall also serve copies of this order upon the respondent nos. 5, 7 and the private respondents.

With the above observations and directions this writ petition, **WPA 11978 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.)