

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

40 06.12.2024
Sc Ct. no.2

WPA 13924 OF 2024

Kashinath Samanta

Vs.

The State of West Bengal & Ors.

Mr. Panchanan Hajra

.... For the Petitioner

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

Mr. Panchanan Hajra, learned advocate appears for the petitioner.

None appears for the respondents.

The petitioner complains of that, on the land of the petitioner the Public Health Engineering Department after encroaching a portion thereof, has constructed an overhead water tank for the locality. The petitioner submits that, neither the land has been acquired by nor has been vested with the State. No compensation has been paid. The petitioner submitted a representation dated **March 27, 2024, Annexure-P5 at page-35** to the writ petition, but the same has not been considered yet.

Relying upon the **prayer (a)** to the writ petition, the petitioner claims removal of the overhead water tank from his land since the construction thereof is illegal upon encroachment of the petitioner's land.

Be that as it may, an overhead water tank which has already been constructed catering the need of the people at the locale at large, involves public purpose. The law is well settled that public purpose, unless manifestly is a result of arbitrary and *mala fide* action on the part of the State, shall prevail upon individual's interest. In the facts of this case, therefore, question of removal of the overhead water tank does not and cannot arise since a greater public purpose will be prejudiced and jeopardized if it is removed. Thus, ***prayer (a)*** stands ***rejected***.

It is also settled that, the petitioner must be compensated since the land of the petitioner has been utilised by the State without due process of law.

In view of the above, the respondent no.5 upon issuing a prior notice of hearing of at least ***seven days*** to the petitioner and other interested parties, if any, and upon giving, them an opportunity of hearing shall dispose of the said representation dated ***March 27, 2024, Annexure-P5 at page 34*** to the writ petition, as referred to above, by passing a reasoned order in accordance with law.

In the event any assistance is required by the respondent no.5, the jurisdictional Block Land & Land Reforms Officer shall provide the necessary assistance by producing the relevant land records and documents before the respondent no.5.

The entire exercise shall be carried out and completed by the respondent no.5 positively within a period of **six weeks** from the date of communication of this order and the reasoned order then shall be communicated to the petitioner, respondent no.4 and/or any other appropriate State authority and other interested parties, if any, within a period of **one week** from the date of the said reasoned order to be passed.

If the reasoned order goes in favour of the petitioner and other interested parties, if any, the respondent no.5 and/or any other appropriate State Authority shall appropriately compensate the petitioner and other interested parties, if any, by paying appropriate compensation payable strictly in accordance with law positively within a period of **three months** 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 claim of the petitioner and the petitioner and other interested parties, if any, shall be at liberty to urge whatever points they wish to urge on their claims for compensation by relying upon whatever records and documents they wish to rely upon before the respondent no.5.

If the reasoned order confirms that, the land has been utilised without following any acquisition process then the respondent no.5 and/or any other appropriate state authority shall take steps and proceed to

compensate the petitioner and other interested parties, if any, adequately in accordance with law by exercising the ***Direct Purchase*** policy.

It is made clear that, if it is found from records that compensation has already been paid to the land owner(s) then there shall be no question of paying any further compensation.

It is further made clear that, this order shall not create any right or equity in favour of the petitioner and other interested parties, if any, if they do not succeed to their respective claims strictly in accordance with law before the respondent no.5.

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

With the above observations and directions, this writ petition, ***WPA 13924 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.)