

Court No. 2

15.7.2024

(Item No. 4)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 14832 of 2024

Enamul Shah & Ors.

VS

The State of West Bengal & Ors.

Mr. Mrinal Kanti Ghosh

Mr. Chandra Nath Sarkar

.... For the petitioners

Mr. Chandi Charan De

Mr. Anirban Sarkar

.... For the State

Mr. Mohan Kumar Sanyal

Mr. Dwipayan Sanyal

.... For respondent No. 9

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

Mr. Mrinal Kanti Ghosh, learned advocate appears for the petitioners.

Mr. Chandi Charan De, learned Additional Government Pleader appears for respondent Nos. 1 to 8.

Mr. Mohan Kumar Sanyal, learned advocate appears for respondent No. 9.

The petitioners complain of an alleged encroachment at the behest of the private respondent No. 9. He submits that, the subject piece of land where upon the encroachment has been alleged is a State land being utilized by the jurisdictional Zilla Parishad as public road. The petitioners submitted a representation dated **April 16, 2024, annexure P-3**

at **page 19** to the writ petition. The same has not been considered.

The learned Additional Government Pleader submits that, the land belongs to the State. The land was handed over to the jurisdictional Zilla Parishad for maintaining the public road. He further submits that, if any encroachment is found, then proceeding has to be initiated under **Section 3 of the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962**.

Learned counsel appearing for the private respondent No. 9 submits that, the owner of the land is the Zilla Parishad and the local Panchayat will have to look at the issue. The private respondent has been residing for about more than last 25 years at the subject structure on the side of the road. He received a fund from Pradhan Mantri Awas Yojana and built up the structure.

After considering the rival contentions of the parties and upon perusal of the materials on record, the respondent No. 4 is directed upon issuing a prior notice to the petitioners, the private respondent No. 9 and the respondent No. 6 to cause a physical inspection of the alleged encroachment and then after granting them an opportunity of hearing shall decide the said representation dated **April 16, 2024** as referred to above by passing a reasoned order.

The entire exercise as directed above, shall be carried out and completed by the respondent No. 4 positively within a period of **six weeks** from the date of communication of this order. The respondent No. 4 then shall communicate its reasoned order to the petitioner, private respondent No. 9 and the respondent No. 6 positively within a further period of **two 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 parties and the parties shall be at liberty to urge whatever points they wish to urge by relying upon whatever records and documents they wish to rely upon before the respondent No. 4.

In the event, the reasoned order confirms the alleged encroachment, then the respondent No. 4 shall take steps in terms of the relevant provisions of the said **Act of 1962** but positively within a period of **six weeks** from the date of the communication of the said reasoned order to the parties.

It is made clear that, this order shall not create any right or equity in favour of the petitioners, if the claim of the petitioners does not succeed 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.

With the above observations and directions this writ petition, **WPA 14832 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.)