

09.07.2024
Sl. No.7(DL)
srm

W.P.A. No. 16692 of 2024
Bhabatosh Pramanik & Ors.
Versus
The State of West Bengal & Ors.

Mr. Mokaram Hossain,
Mr. A.R. Jaglul Kabir
...for the Petitioners.

Mr. Sirsanya Bandyopadhyay,
Mr. Ritesh Ganguly
...for the State-respondents.

Mr. Timir Baran Saha
...for the Respondent No.8.

1. The petitioner contends that the Sub-Divisional Magistrate, Tehatta, Nadia did not grant an opportunity of hearing to the petitioners before passing the order under Section 4(1) of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 (hereinafter referred as the 1962 Act).
2. According to the petitioners, they are running stalls on the land in question upon permission from the appropriate authority and upon payment of licence fees. The petitioners also submit that the direction of this Court upon the authorities was to initiate proceedings under Section 10 of the West Bengal Highways Act, 1964. Thus, the invocation of powers under Section 4 of the 1962 Act was contrary to the

direction of this Court. Lastly, it is submitted that the order impugned should be set aside on the ground of violation of principles of natural justice as the petitioners were not present during the demarcation and at the hearing. The order was passed without considering the procedure established by law and without allowing the parties likely to be effected by the order of demolition. The order cannot be sustained and is liable to be set aside.

3. Learned Advocate for the respondent No.8 submits that an order was passed in WPA No.23555 of 2023. A learned coordinate Bench had directed initiation of proceedings under the 1962 Act. The relevant portion of which is quoted below:

“In view of the above, this Court is inclined to hold that since the plots in question appear to be Government land and the writ petition alleges encroachment of the same by the private respondents by raising unauthorised construction therein, the concerned authority being the 3rd respondent herein, be directed to initiate proceedings under the Act of 1962 and take the proceeding to its logical conclusion within two months from the date of communication of this order upon affording reasonable opportunity of hearing to all the interested persons including the petitioner and the private respondents, in accordance with law.”

4. Mr. Sirsanya Bandyopadhyay, learned Junior Standing Counsel submits that all the parties who were found available at the site during the inspection and demarcation were notified about the hearing and adequate opportunity of

hearing was given to all. The petitioners were not found during any such inspection.

5. It is a disputed fact as to whether the petitioners were available on spot or were actually the persons running the shops at the relevant point of time when the requisite inspection and hearing were held.
6. This matter cannot be resolved by the writ court unless the Court is satisfied that the petitioners had a right either as licensees or as any other occupant, to use the public land for business purpose.
7. It appears from the order passed by the authority that temporary structures and permanent structures had been constructed on government land, i.e. plot No.1111/3521 which was recorded in favour of the Collector, Nadia and classified as Nayanjali. Thus, any enlistment certificate or trade licence granted by the panchayat authority for business activities over the said land was contrary to the provisions of law.
8. Under such circumstances, the writ petition is disposed of without any orders. The petitioners may prefer a statutory appeal from the said order, in accordance with law.
9. There shall be no order as to costs.
10. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)