

Item No.9
01.08.2024
Court. No. 9
GB

W.P.A. 17473 of 2024

Hamedul Sha & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Amitabha Karmakar,
Mr. Dhananjoy Banerjee,
Mr. Arup Kumar Bhowmick,
Ms. Oindrila Ghosh,
Ms. Sangita Singh

...for the Petitioners.

Sk. Md. Galib,
Mr. Abu Siddique Mallik

...for the State.

1. Affidavit-of-service filed in Court today, is taken on record.
2. None appears on behalf of the Haldia Development Authority.
3. This writ petition has been filed challenging an order under Section 4(1) of the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962. The petitioners were directed to remove the unauthorized construction from the plots belonging to the Haldia Development Authority. The authority also directed removal of unauthorized occupants from the land belonging to the Assistant Engineer, Irrigation and Waterways Department which was being occupied by another individual, within 60 days. In case of failure to execute the order, the Haldia Development Authority and the Assistant Engineer, Irrigation and Waterways Department were authorized to remove the unauthorized construction in question and take

possession of the land with the help of the police authorities. The petitioners have challenged the said order on the ground that the Sub-Divisional Officer and the Sub-Divisional Magistrate, Haldia did not have jurisdiction to pass such orders.

4. This question is not available to the petitioners, as it appears from the conduct of the petitioners that the petitioners had submitted to the jurisdiction before the authority concerned on various occasions. Secondly, the definition of the expression 'collector' includes a Sub-Divisional Magistrate. The Sub-Divisional Officer, Haldia also functions as the Sub-Divisional Magistrate. Thus, the order passed under Section 4(1) of the Act is not without jurisdiction.
5. With regard to the merits of the order, it is submitted by the petitioners that before deciding the case of encroachment and before directing removal of the encroachment, the applications filed by the petitioners, for regularization of their occupation upon grant of necessary permission in exchange of fees/licence fees, lease rent, etc., had to be decided. The authority could not have straightaway held them to be encroachers. The land admittedly belonged to the Haldia Development Authority. At the instance of the Haldia Development Authority, the proceedings were initiated. It is for the Haldia Development Authority to decide whether they would permit any person to occupy their land upon grant of licence, lease rent, etc.

6. However, it appears that the petitioners approached the Haldia Development Authority with such prayer.
7. This writ petition is disposed of without any expression on the right of the petitioners for grant of lease or licence in respect of the area under their occupation, upon payment of fees. It is entirely within the jurisdiction of the Haldia Development Authority to decide in this regard.
8. The fact that the petitioners are encroachers, is not in dispute. The report of the Sub-Block Land and Land Reforms Officer clearly indicates that the land belongs to the Haldia Development Authority.
9. Under such circumstances, the writ petition is disposed of granting liberty to the petitioners to prefer an appeal before the concerned collector. The petitioners are also granted liberty to file an application for condonation of delay. If such application is made, the same shall be disposed of in accordance with law. The issue as to whether the Haldia Development Authority is willing to grant permission to the petitioners to occupy any part of the encroached portion upon such terms and conditions as the development authority deems fit, may be urged before the appellate authority. The petitioners will prefer the appeal along with necessary applications within a week from date. No coercive actions shall be taken for a period of one month from date or until further orders of the appellate authority whichever is earlier, provided the petitioners approach

the authority as directed by this Court, within two weeks along with an application for condonation of delay.

10. Accordingly, writ petition is disposed of.
11. However, there will be no order as to costs.
12. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)