

11     25.9.2024  
Sc     Ct. no.2

**WPA 17819 OF 2023**  
**with**  
**I.A. No. CAN 1 OF 2023**  
(not traceable in the file)  
**with**  
**I.A. No. CAN 2 OF 2024**  
(Application for injunction)

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Baisakhi Maitra nee Das & Ors.  
-vs.-  
The State of West Bengal & Ors.

Mr. Saptansu Basu  
Mr. Ritzu Ghosal  
Mr. Sayantan Chatterjee  
Mr. Anirban Ghosh.  
..... For the Applicants/  
Petitioners

Mr. Chandi Charan De, Ld. AGP  
Mr. Anirban Sarkar.  
.... For the Respondent/  
Nos. 1 to 4

Mr. Srijan Nayak  
Ms. Rituparna Maitra  
Mr. Arpan Kundu.  
.... For the Respondent  
Nos. 5 to 8

Four sets of affidavits-of-service, filed in Court today in Court, are taken on record.

Mr. Saptansu Basu, learned senior counsel being ably assisted by Mr. Ritzu Ghosal, learned counsel appear for the applicants/petitioners.

Mr. Chandi Charan De, learned Additional Government Pleader appears for the respondent nos. 1 to 4.

Mr. Srijan Nayak, learned counsel appears for the respondent nos. 5 to 8.

**Re : I.A. No. CAN 1 OF 2023**

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Mr. Saptansu Basu, learned senior counsel appearing for the applicants/petitioners submits that, this is an application for expunging and/or deletion of the name of the respondent no.9 from the array of the respondents in the writ petition. Learned senior counsel, on instruction, submits that, the respondent no.9 may be deleted from the scope of this proceeding and no relief is being sought for against the respondent no.9.

However, the record shows that, the original application, **I.A. No. CAN 1 of 2023** is **not available** on record.

Learned counsel appearing for the parties before this Court have agreed to proceed with the main writ petition without the said application, **I.A. No. CAN 1 of 2023** being available in the file.

**WPA 17819 OF 2023**  
**with**  
**I.A. No. CAN 2 OF 2024**

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The petitioners claim to be the owners of a piece and parcel of a land through their predecessors-in-interest as more fully and particularly described in **paragraph 6** to the writ petition. The petitioners claim

that, their predecessors had received the land by virtue of a **Refugee Rehabilitation Scheme** of the State and since then the predecessors were in possession and now the petitioners are in possession in an uninterrupted and continuous manner.

The issue involved in this writ petition had also travelled to this Court through a previous writ petition, **WPA 6305 of 2022**. A coordinate Bench by its order dated **March 31, 2023, Annexure-P13 at page 126** to the writ petition disposed of the said writ petition directing the respondent no.2 to consider the case of the petitioners. The principal allegation of the petitioners then was that, two electricity poles were erected by the respondent nos. 5 to 8, the West Bengal State Electricity Distribution Company Limited, on a portion of the said land without obtaining any prior permission from the petitioners or their predecessors-in-interest and without granting any opportunity of hearing to them.

Pursuant to the said order dated **March 31, 2023**, the respondent no.2 has passed its impugned order dated **June 1, 2023, Annexure-P14 at page 131** to the writ petition.

Mr. Saptansu Basu, learned senior counsel appearing for the petitioners referring to the various parts of the said impugned order submits that, the impugned order refers to a detailed report and a show cause notice. He submits that, neither such report nor the show cause

notice was ever served either upon the predecessors-in-interest of the petitioners or upon the petitioners. This is a basic violation of the elementary principle of natural justice. On this score alone the impugned order is liable to be set aside.

Then learned senior counsel further submits that, the impugned order refers to a State policy by way of circular/notification under which the resumption has already been taken place in respect of the said land by the appropriate State authority on the plea that, the original allottee was never in possession despite allotment and did not carry out any agricultural activity from the land. Mr. Basu, has denied and disputed these plea, taken by the respondent no.2, in the said impugned order while cancelling the allotment of land and/or resumption thereof.

Mr. Chandi Charan De, learned Additional Government Pleader appearing for the State respondents submits that, all those documents on the basis whereof the impugned order was passed were duly served upon the petitioners or upon their predecessors-in-interest at the relevant point of time. The resumption policy of the State is still in effect and since the original allottee of the land was not found in possession of the land and did not carry any agricultural activity therefrom, at the relevant point of time, the resumption of land had taken place. The impugned order, therefore, terminated the allotment

in a lawful and just manner. The impugned order is not to be interfered with by this Court.

Mr. Srijan Nayak, learned counsel appears for the Electricity Distribution Company Limited.

After considering the rival contentions of the parties and upon perusal of the materials on record, this Court first reiterates the settled law that, this constitutional Court in exercise of its jurisdiction under Article 226 of the Constitution in judicial review has a limited authority to scrutinize the impugned order. Unless there is an apparent violation of natural justice, a glaring perversity on the face of the impugned order or a glaring infirmity in the decision making process, this constitutional Court shall not intervene.

In the light of the said settled principle of law, when this Court has scrutinized the impugned order, it appears that, the detailed report and a show cause notice mentioned in the said impugned order whether were served or not is not clear from the impugned order. Since the petitioners have denied the receipt of such report and the show cause notice and the respondents have not been able to produce before this Court any material contrary thereto to controvert the contention of the petitioners and since it is also not available from the impugned order that the said report and the show cause notice were served upon the petitioners or their predecessors-in-interest, on the face of it, it appears to this Court that, there has been

a breach of fundamental principle of natural justice while passing the impugned order.

From a further scrutiny of the impugned order it appears to this Court that, there is no sufficient material to demonstrate unimpeachably that, the grounds those were available to the State authorities for resumption of the property, for which some factual inquiry was required to be made in presence of the predecessors-in-interest of the petitioners or the petitioners at the relevant point of time, have proved those grounds for resumption.

For those reasons, this Court is of the firm and considered view that, there is infirmity in the decision making process under which the respondent no.2 has passed the impugned order. The impugned order, therefore, cannot succeed and stand in the eye of law.

Accordingly, the order impugned dated **June 1, 2023, Annexure-P14 at page 131** to the writ petition stands **set aside** and **quashed**.

This Court is also of the further view that, considering the issue involved in this writ petition no fruitful purpose will be served by keeping this writ petition pending by calling affidavits thereupon, instead, this Court thinks that, **the respondent no.2 shall revisit the issue in accordance with law.**

Accordingly, the respondent no.2 shall disclose all the relevant materials, which shall be relied upon by the respondent no.2 while revisiting the issue, to the

petitioners positively within a period of **four weeks** from date of communication of this order.

Thereafter, the respondent no.2 shall issue a prior **seven days'** notice of hearing to the petitioners and proceed to hear the petitioners on the basis of those materials to be made available to the petitioners, as directed above and shall finally decide the issue by passing a reasoned order in accordance with law.

None of the parties shall be permitted to digress from or modify or add anything to their respective issues already raised before the respondent no.2.

The entire exercise shall be carried out by the respondent no.2 within a period of **ten weeks** from the date of communication of this order and then the reasoned order shall be communicated to the petitioners within a period of **one week** from the date of the said reasoned order to be passed.

The respondents State authorities and/or its assignee or agents shall not take any step or further steps or coercive steps against the petitioners with regard to the subject plot of land mentioned in **paragraph 6** to the writ petition and there shall be an order of *status quo* with regard to the nature, character and possession of the subject plot of land till **two weeks** after the said reasoned order shall be passed by the respondent no.2.

It is made clear that, this Court has not gone into the merits of the writ petition and the petitioners shall be

at liberty to urge whatever points they wish to urge by relying upon whatever records and documents they wish to reply upon before the respondent no.2 but the same shall not travel beyond the scope of the issue already raised and pending before the respondent no.2 on which the said impugned order was passed.

It is also made clear that, this order shall not create any right or equity in favour of the petitioners, if they do not succeed to their claim strictly in accordance with law.

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

With the above observations and directions, this writ petition, **WPA 17819 of 2023** stands ***disposed of***, without any order as to costs.

The connected interlocutory applications also stand ***disposed of*** accordingly.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

**(Aniruddha Roy, J.)**