

WPA 19993 OF 2024

Smt. Sushila Singh & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Saptansu Basu	
Mr. Dyutiman Banerjee	
Mr. Deb Kumar Deashi.	
	... For the Petitioners
Mr. Pradipta Siddhanta	
	... For the Respondent
	Nos.1 to 4 and 7 to 9
Mr. Biplab Ranjan Bose	
	... For the Respondent
	Nos. 5 & 6

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

Mr. Saptansu Basu, learned senior counsel appears for the petitioners.

Mr. Pradipta Siddhanta, learned counsel appears for the respondent nos. 1 to 4 and 7 to 9.

Mr. Biplab Ranjan Bose, learned counsel appears for the respondent nos.5 & 6.

Through this writ petition the petitioners have challenged the impugned order dated **July 12, 2024** passed by the respondent no.3 in an eviction proceeding being **Case No. 1 of 2024** instituted before it by the concerned municipality.

The Municipality claims that the writ petitioners are the unauthorized occupants in respect of its land which is

a public premises. The concerned municipality filed an application seeking eviction of the writ petitioners at **page 34** to the writ petition to which the writ petitioners being the respondents therein filed their written statement at **page 44** to the writ petition. Through the impugned order dated **July 12, 2024** passed by the respondent no.3, *inter alia*, the jurisdictional BL&LRO was directed to correct the land records on request from the municipality and the writ petitioners being the respondents therein were directed to remove the gate within a period of **fifteen days** from the order to enable the municipality to recover its possession.

Being aggrieved with the said impugned order, the writ petitioners being the respondents in the eviction proceeding had preferred an appeal which was received by the appellate authority on **July 12, 2024 at page 15** to the writ petition.

Mr. Saptansu Basu, learned senior counsel appearing for the petitioners, on instruction, submits that, the appeal has not yet been registered though the appeal was filed within the timeframe specified under the statute.

Learned senior counsel for the petitioners submits that, the impugned order on the face of it is bad in law as the same suffers from serious infirmity without there being any reason and finding at all. Hence, he prays for setting aside of the said impugned order.

Mr. Biplab Ranjan Bose, learned counsel appearing for the concerned municipality submits that, the record will show that, the petitioners are the unauthorized occupants in respect of the municipality's land. The writ petitioners had installed the gate without any permission from the landlord and by virtue of erection of the said gate, the egress and ingress of the other occupants are resisted including the access of the landlord. He supports the impugned order and submits that, no intervention is required. He further submits that, the gate has already been removed in terms of the impugned order dated **July 12, 2024**.

Learned counsel for the State files a police report dated **August 11, 2024**, issued under the seal and signature of the **Officer-in-Charge, Mogra Police Station, Hooghly**, the same is taken on record. Such report also confirms the removal of the gate.

After considering the rival contentions of the parties and upon perusal of the materials on record it appears to this Court that, to adjudicate upon the issues involved in the eviction proceeding as would be evident from the averments made in the application filed by the concerned municipality and the case made out by the writ petitioners respondents therein in their written statement, several fact finding inquiries are required to be made. The appeal has already been preferred by the writ petitioners before the appellate authority and the

appellate authority has jurisdiction to cause the detailed inquiry while assessing the said impugned order.

It is trite that, alternative remedy is not an absolute bar while exercising power and authority by a constitutional Court under Article 226 of the Constitution of India but it is a self-imposed restriction. Once this Court is of the view that, to assess the said impugned order certain fact finding inquiries are required to be made, this Court is of the considered opinion that, it shall not enter into such fact finding inquiries, more so, when the appeal has already been instituted.

In view of the foregoing reasons and discussions the jurisdictional appellate authority, before whom the appeal has already been submitted, is directed to register the same subject to its maintainability positively within a period of **three days** from the date of communication of this order.

This Court is further informed that, the writ petitioners being the appellants before the appellate authority have already filed an application for stay of operation of the impugned order. The same shall also be registered before the appellate authority within the said period of time as directed above.

The appellate authority then upon issuing prior notice to the writ petitioners/appellants and the municipality respondent shall hear out the stay application and come to its logical conclusion strictly in

accordance with law but positively within a period of **four weeks** from the date of registration of the appeal. There shall be no unnecessary adjournments granted to either of the parties.

There shall be an order of *status quo* with regard to the possession of the writ petitioners **till six weeks** after the registration of appeal.

It is made clear that, the direction made above upon the appellate authority including disposal of the stay application filed by the writ petitioners is mandatory. The appellate authority shall also dispose of the appeal expeditiously, without granting unnecessary adjournment to the parties.

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

It is made clear that, this Court has not gone into the merits of the writ petition and the parties shall be at liberty to urge whatever points they wish to urge before the appellate authority but not beyond the scope of the appeal pending before it. The appellate authority while deciding the appeal and the stay application shall not be influenced by any observation made by this Court and shall be free to decide the proceeding on its own merit with its independent mind.

With the above observations and directions, this writ petition, **WPA 19993 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.)