

03 **09.12.
2024**

Ct. No. 08

Ab

**MAT 1600 of 2024
IA No. CAN 1 of 2024**

**Najrul Islam and another
Vs.
The State of West Bengal and others.**

**Mr. Golam Mastafa,
Mr. T. S. Samanta.**

... for the appellants.

**Mr. Indranil Roy,
Mr. Tapas Kumar Mandal.**

... for the State.

Encroachers of a public land are resisting the action taken by the authority as permissible in law and coming up with the allegation that in the garb of the order passed by the competent authority, the demolition has taken place in excess of the same.

Initially, a writ petition was filed assailing the order of the competent authority directing demolition of the encroachment over the public property (PWD) on multiple grounds including that the structure was constructed more than 5 to 6 decades and the person was found to be in settled possession would not be vacated therefrom.

The Single Bench proceeded to dismiss the said writ petition by recording categorical findings that the proceeding was initiated by the competent authority and the report of the Block Land and Land Reforms Officer and the Amin was taken into consideration and, therefore, there is no legal right accrued to the appellants to assail the said order passed in accordance with law.

An appeal is filed by such encroachers and amidst the hearing of the appeal, a supplementary affidavit is filed to demonstrate that the police authorities have used excessive powers in demolishing the entire structure including the structure constructed upon a plot of land belonging to the appellants. It is

further sought to be contended that the police cannot take independent steps de hors the competent authority in demolishing the structure and, therefore, the Court should direct an appropriate enquiry to be made in this regard.

The Counsel for the State hands over the letter issued to him by the Officer in-Charge of the concerned police station. It is revealed therefrom that a letter was issued from the office of the Assistant Engineer, Public Works Department, Berhampore Division-II vide memo no. 630 dated 10th September 2024, requesting the assistance of the police at the time of removal and/or demolition of the structure on the encroached land.

Apropos the memo, the Officer in-Charge issued a letter indicating that the demolition would take place in terms of the said memo on 21st September 2024.

We do not find any substance in the stand of the appellants that the police have taken independent steps de hors the order of the competent authority and have used excessive powers. A proceeding was initiated against the appellants alleging encroachment over the PWD land and such report would reveal that the appellants themselves admitted to have encroached upon the PWD land by making construction. The order of demolition and/or removal of the structure of the encroached land was passed, but the recourse was taken as permissible in law and ultimately a writ petition was filed with an avowed object by thwarting and/or suspending the implementation of the order of demolition or removal of structure over the encroached land.

The police administrations have not used any excessive powers nor have acted independently, but have simply communicated the memo dated 10th September 2024 wherein a date and time for removal and/or demolition of the structure on the encroached

land was communicated from the office of the Assistant Engineer, Public Works Department.

So far as the allegation of the demolition of the entire structure is concerned, apart from a bald assertion, there is nothing disclosed that it has acceded that the demolition has taken place over the plot of land claimed by the appellants and does not belong to PWD.

An impression is sought to be created that not only the structure standing on the encroached land, but the structure, which was constructed on the land, allegedly belonging to the appellants, was also demolished, does not appear to have been substantiated from the documents annexed thereto. The appellants have already approached the authority alleging such grievance and, therefore, we do not delve to go into such aspect.

We are not unmindful of the fact that in recent time there has been a rampant encroachment of the public land by making a construction and thereafter taking shelter under the law, which has resultant effect of delayed implementation or action to be taken in this regard. Such encroachment is mushrooming throughout the country and the time has come that the authorities must take immediate and prompt steps for removal of the structures constructed on the encroached public land.

We, thus, do not find any merit in the instant appeal. The appeal is, thus, dismissed.

In view of the dismissal of the appeal itself, the connected application being CAN 1 of 2024 has become infructuous and the same is also dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Hiranmay Bhattacharyya, J.)

