

22.08.2024
Ct. No. 2
Sl. No. 9
tbsr

WPA 21267 of 2024

Satyanarjan Barik
Vs.
The State of West Bengal & Ors.

Mr. Biswaroop Bhattacharya
Mr. Sk. Sayan Uddin
....for the petitioner

Mr. Soumitra Bandyopadhyay
Mr. P.B. Mahato
Mr. Priyabrata Batabyal
....for the State

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

The petitioner claims to be in permissive occupation in respect of a shop room constructed by the State situated on the State land. The petitioner is in occupation since the days of his predecessors-in-interest for more than 50 years. The State has initiated eviction proceeding under the relevant provisions of the **West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962**. The petitioner has participated in the hearing held before the respondent no. 2. The respondent no. 2 on August 6, 2024 passed an order of eviction under Section 4(1) of the said 1962 Act at **page 75** to the writ petition. The petitioner through this writ petition has challenged the said impugned order passed by the

respondent no. 2 on various grounds. The petitioner submits that, the land report prepared by the jurisdictional BL&LRO on the basis whereof the impugned order was passed was not furnished before the petitioner. The petitioner contends that the proceeding ought not to have been proceeded under the said 1962 Act and should have been as per the provisions laid down under the **West Bengal Land and Land Reforms Manual, 1991**. The petitioner contends the authority passed the said impugned order was inherently lacking with the jurisdiction. Therefore, the impugned order is *non-est* and bad in law. The petitioner is in possession of the shop room.

Mr. Soumitra Bandhyopadhyay, learned State counsel being ably assisted by Mr. Priyabrata Batabyal, learned State advocate appearing for the respondents, on instruction from their clients, submits that no immediate date has been fixed to execute the said impugned order dated August 6, 2024 for eviction of the petitioner. He further submits that, the impugned order was passed pursuant to the direction made by the Hon'ble Division Bench in a public interest litigation directing the respondent no. 2 to initiate proceeding against the unauthorized occupants in connection with WPA (P) 438 of 2022 as also in terms of the Co-ordinate Bench order dated **February**

5, 2024, Annexure P/10 at page 60 to this writ petition.

Learned State counsel further submits that, the petitioner filed the previous writ petition before the Coordinate Bench but did not take the point of jurisdiction as they have taken today. He further submits that, the petitioner previously repeatedly prayed for long term settlement in respect of the said shop room, which was rejected by the concerned authority. The State further contends that, there is no document disclosed by the petitioner to establish their right for permissive occupation in accordance with law.

Mr. Sayan Uddin, learned advocate appearing for the petitioner, *per contra*, denies and disputes the submissions made on behalf of the State.

After considering the rival contentions of the parties and upon perusal of the materials on record, at the outset, it appears to this Court that, a provision for statutory appeal is provided under Section 7 of the said 1962 Act. The allegations and counter allegations of the parties, as recorded above, can be argued before such appellate authority.

It is true that alternative remedy provided under the statute is not an absolute bar for a writ court to entertain the writ petition but it is a self-imposed restriction. From the submissions made on

behalf of the parties, it appears to this Court that several fact finding enquiries are required to be made. Such is not a job of a writ court, more so, when an appeal provision is there under the statute. The provision for appeal is efficacious, alternative and statutory remedy.

For the foregoing reasons and discussions, this Court is of the considered view that, this writ petition shall not be entertained by this Court in its high prerogative writ jurisdiction and the petitioner may file the necessary appeal before the appropriate appellate authority under the said 1962 Act.

The petitioner shall be at liberty to file his appeal before the appropriate appellate forum within a period of **seven days** from date. The petitioner shall also be at liberty to pray for interim relief before the appellate forum.

In the event, such an appeal is preferred and interim reliefs are prayed for by the writ petitioner, the appellate authority shall consider the said interim relief immediately and shall come to the logical conclusion of the prayer for such interim relief in accordance with law positively within a period of **two weeks** from the date of filing of the appeal.

It is made clear that, this Court has not gone into the merits of the rival contentions of the parties

and the parties shall be at liberty to urge whatever points they wish to urge before the appellate authority by relying upon whatever records and documents they wish to rely upon.

It is made clear that, if the appeal is filed with the interim relief, the appellate authority shall decide the same by applying its independent mind, in accordance with law and without being influenced by any observation made by this Court.

It is further made clear that, since the State authority has not yet decided to take further steps in terms of the said order dated August 6, 2024, as submitted by the learned State counsel before this Court, the appropriate State authority shall serve **seven days** prior notice to the petitioner only before taking any further step.

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

With the above observations and directions, this writ petition, **WPA 21267 of 2024** stands **disposed of**, without any order as to costs.

In view of the urgency involved in the matter, the learned advocates appearing for the parties shall be at liberty to communicate gist of this order to the parties to the writ petition.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)