

29.08.2024
Item No.52
RP/AN
Ct. No.1

WPA(P) 359 of 2024
Tarun Kumar Bera & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Haradhan Banerjee
Ms. Somali Mukherjee
Mr. Vivek Kumar Tripathi
Mr. Manindra Paul
Mr. P.P. Mukhopadhyay
..... For Petitioner
Mr. A. Ray, Ld. GP
Mr. T.M. Siddiqui, Ld. AGP
Mr. T. Chakraborty
Mr. D. Sahu
..... for State

1. The petitioners by way of filing this public interest litigation seek to question the order passed by the District Magistrate, Purba Medinipur, by which the petitioners were termed as unauthorized encroachers and were directed to vacate the government land. The reason for filing this public interest litigation is on the ground that the initial action which was taken by the authority was in furtherance to a direction issued in WPA(P) 438 of 2022 on 26th September, 2022. Learned advocate appearing on behalf of the petitioners places reliance on the judgment of the Hon'ble Supreme Court in the case of Shivdev Singh & Ors. vs. State of Punjab & Ors. reported in AIR 1963 SC 1909 for the proposition that under Article 226 of the Constitution of India the High Court is not

precluded from exercising the power of review which inheres every court of plenary jurisdiction to prevent miscarriage of justice and to correct grave and palpable error committed by it. The first prayer sought for in the writ petition is to review the order passed in WPA(P) 438 of 2022 dated 26th September, 2022.

2. Considering the facts of the case and after going through the said order, we find that the decision relied on by the learned advocate for the petitioners in the case of Shivdev Sing (supra) would have no application in the facts and circumstances of the case as we find no grave and palpable error for this Court to exercise such power.
3. Be that as it may, if the petitioners, who are termed as encroachers, are aggrieved by the order of the District Magistrate, Purba Medinipur, the same has to be challenged in the manner known to law. The learned advocate appearing for the petitioners submits that the petitioners are not challenging the said order but in all probability the order passed by the Division Bench in the earlier public interest litigation would stand in the way and they are likely to be non suited. The petitioners need not have any such apprehension as the order passed by the Division Bench in the earlier public interest litigation only directed appropriate steps to be taken in

accordance with law. The petitioners therein did not come forward with a prayer that a political party has put up unauthorized construction on the said land which was classified as 'bastu'. Therefore, this writ petition is disposed of by giving liberty to the petitioners to challenge the order passed by the District Magistrate, Purba Medinipur in the manner known to law and if such challenge is made the said forum shall decide the matter independently on merits and in accordance with law.

4. With the aforesaid observations, this writ petition is disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)