

28.08.2024

Item No. 183

Ct. no.2

A.B.

WPA 21765 of 2024

Budhiya Singh & Ors.

-Vs.

The State of West Bengal & Ors.

Mr. Purbayan Chakraborty

Mr. Deeptangshu Kar

... For the Petitioners

Mr. Chandi Charan De

Mr. Anirban Sarkar

.... For the State.

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

This writ petition has been mentioned today before this Court on behalf of the petitioners.

This writ petition belongs to the regular determination of this Court. The endorsement on the fiat of the original writ petition shows that, yesterday leave was granted by the Hon'ble Judge, who was assigned with the determination of this Court, to move this writ petition today i.e. **August 28, 2024** which is appearing in today's cause list as **serial No. 183**. The parties are present. Accordingly, this writ petition has been taken up for consideration.

Mr. Purbayan Chakraborty, learned counsel, appears for the petitioners.

Mr. Chandi Charan De, learned Additional Government Pleader appears for the respondents.

This order shall be effected subject to payment of seven individual Court fees by the seven petitioners who have not paid the Court fees with the department.

Eight writ petitioners in this writ petition have challenged the impugned order dated **August 14, 2024** passed by the **respondent no. 2** in exercise of its power under **Section 10 of the West Bengal Highways Act, 1964.**

The issue previously also travelled before a Co-ordinate Bench by other petitioners therein in **WPA No. 13875 of 2023**. A Co-ordinate Bench by its order dated **September 12, 2023, annexure P-1 at page 23** to the writ petition disposed of the said writ petition with a direction upon the respondent no. 2 to consider the case of those petitioners in the manner and mode as directed therein.

Pursuant to the said direction, the respondent no. 2 considered the issue and passed the impugned order. Under the impugned order, these two petitioners along with others were found to be alleged encroachers of public land and possession was directed to be recovered from them.

Challenging the said impugned order dated **August 14, 2024**, these eight petitioners preferred their separate appeals before the statutory Appellate Authority under **Section 10(4) of the said 1964 Act**. The appeals are pending.

Mr. Chakraborty, learned counsel further submits it is the constitutional mandate which makes the State obligatory to provide shelter to its every citizen. Since the State has failed to provide such shelter, the petitioners along with the other appellants who have filed the statutory appeals cannot be deprived of their shelter, more so when the land upon which they are situated are not required for public purpose.

Learned Additional Government Pleader submits, the petitioners along with others in the statutory appeals are found to be encroachers on record and according to the report prepared and submitted by the jurisdictional Block Land & Land Reforms Officer (B.L. & L.R.O.). The encroachers shall not be granted any protection. He further admits that the appeals have been filed and are pending before the statutory appellate authority.

Learned Additional Government Pleader submits that, the subject land which has been encroached by the petitioners are very much required for public purpose. The land is a PWD land and rank encroachers cannot seek any protection in support of their encroachment of public land.

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, the previous writ petition was also filed by few individual writ

petitioners, in which the Co-ordinate Bench passed its order dated **September 12, 2023**. In the instant writ petition also eight individual writ petitioners are there, who have filed their respective statutory appeals.

Learned Counsel for the petitioners on instruction from his clients submits that, the prayer for interim relief has already been made before the statutory appellate authority in the pending appeals.

In view of the above, the jurisdictional statutory appellate authority is directed to here out the interim reliefs prayed for by these two writ petitioners before it and shall decide the interim relief prayer with its reasonable conclusion after affording an opportunity of hearing to these **eight writ petitioners** and by passing a reasoned order.

The entire exercise as directed herein shall be carried out and completed by the jurisdictional appellate authority in so far as interim relief is concerned on or before **September 11, 2024**. The order shall be served upon these eight writ petitioners on or before **September 16, 2024**.

There shall be no further steps or coercive steps to be taken by the respondent authorities against **these two writ petitioners** till **September 23, 2024**.

It is made clear that this order shall not create any right or equity in favour of these eight writ petitioners, if these petitioners do not succeed to their

claims for interim relief before the jurisdictional appellate authority strictly in accordance with law.

It is made clear that this Court has not gone into the merits of the claim of these petitioners and these eight petitioners shall be at liberty to urge whatever points they wish to urge in support of their contention before the jurisdictional appellate authority by relying upon whatever records and documents they wish to rely upon.

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 21765 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.)