

03.10. 2024
SL No.19

Court No.2
sg

WPA 23439 of 2024

**Nemai Maji
Vs.**

The State of West Bengal & Ors.

Mr. Salil Kumar Maity
Ms. Pinki Saha

....for the petitioner.

Mr. Goutam Das

Mr. Tapan Kr. Maity

....for the private
respondents nos. 10 and 15.

Mr. Samira Mandal

Mr. A. Das

Mr. Nitish Samanta

....for the private
respondents nos. 8,9,11,12,13
and 14.

Mr. Ayan Banerjee

Mr. Amrita Lal Chatterjee

....for the State.

Affidavit of service filed in Court is taken
on record.

Mr. Salil Kumar Maity, Counsel appears for
the petitioner.

Mr. Samiran Mondal, learned Counsel
appears for the respondents nos. 8,9,11,12 13 and
14.

Mr. Goutam Das, Counsel appears for the
private respondents nos. 10 and 15.

Mr. Ayan Banerjee, appears for State
Counsel 1 to 7.

The petitioners complains of an alleged
unauthorized construction and encroachment over

the state land at the behest of the private respondents. The petitioner submitted its representation dated **July 15, 2024 annexure P- 3 at page 38** to the writ petition before the State authority but the same not been considered.

Mr. Goutam Das, learned Counsel appearing for the private respondent nos. 10 and 15 submits that this is a purely civil dispute. First, it has to be ascertained whether egress and ingress of the petitioner is at all infringed by the private respondents. He further submits that there is hindrance to the ingress and egress of the petitioner at the behest of the private respondents. A properly constructed road access is their for egress and ingress of the petitioner. The private respondents seek to rely upon sketch map, a copy has been made over the Court, is taken on record. The writ petition is not maintainable since there is an involvement of private dispute. The representation dated July 15, 2024 is contradictory. In support of his contention learned Counsel has relied upon a decision of the Hon'ble Division Bench In the matter of : ***Avijit Dandapat & Ors. Vs. Sunil Roy & Ors. dated 14th August, 2014 rendered in MAT 963 of 2014 with CAN 5675 of 2014.***

Mr. Mondal, learned Counsel appearing for the respondent Nos. 8,9,11,12,13 and 14 has

adopted the submissions made by Mr. Goutam Das, as recorded above.

Learned Counsel for the State submits since the representation, as referred to above, is pending the appropriate authority shall consider the same in accordance with law.

After considering the rival contentions of the parties and upon perusal of the materials-on-record, it appears to this Court that, when an allegation has been made alleging encroachment on a State land by the private individuals and the same is brought to the notice of the appropriate State authorities, it is the obligation of the State authority to consider the same in accordance with law. An encroachment, if any on the public land, the same is always contrary to law and shall have to be reminded.

The parties confirm that there is no civil suit pending touching the said land on which encroachment has been alleged.

In the matter of :- **Avijit Dandapat & Ors. Vs. Sunil Roy & Ors.(supra)** the appeal was carried out from an interim order. The relevant observations of the Hon'ble Division Bench are quoted below

“Considering the impugned order passed by the learned Trial Judge, we find that the ultimate relief which the writ petitioner has claimed in

the writ petition has been granted by the learned Trial Judge at the interim stage. Such relief by way of interim measure cannot be granted by the learned Trial Court as grant of such interim relief will ultimately amount to the grant of the ultimate relief in the writ petition.

We have already indicated above that the writ petition has been kept pending. Adjudication as to the encroachment of the Government' land by the private respondents is not complete. We do not know as to what right the private respondents may ultimately claim in respect of the land encroached by the private respondents. We also do not know as to whether the disputed land belongs to the Government or not.

As such, we feel that without completing the adjudication with regard to the relief claimed by the writ petitioner in the writ petition, the relief which was granted by the learned Trial Judge by way of interim measure ought not to have been granted."

The Hon'ble Division Bench had held that by way of interim order the final relief claimed in the writ petition was granted, which is not permitted in law. The Hon'ble Division Bench directed the writ

petition to be heard on affidavits for its final disposal.

In the instant case, this Court is of the view that no fruitful purpose shall be served by keeping this writ petition pending when representation has been made before State authority and the same has not been considered in accordance with law. Thus, this Court proceeds with this writ petition for its final disposal.

If in the event, in course of the enquiry to be conducted by the appropriate State authority, it is found that encroachment is there on the public land, no second thought can be given but to remove the same forthwith following due process of law.

Accordingly the ratio of the said judgement **In the matter of : Avijit Dandapat & Ors. Vs. Sunil Roy & Ors. (supra)** would have no application in the facts situation of this case.

In view of the above the respondent no.7 upon issuing a prior notice to the petitioner and the private respondent nos. 8 to 15 shall cause a physical inspection of the alleged encroachment and to demarcate it and then shall prepare a report. Copy of the report shall be provided to the petitioner, private respondents and respondent no.4.

This exercise shall be carried out and completed by the respondent no.7 positively within a

period of **4 weeks** from the date of communication of this order.

After receiving a copy of the said inspection report from the respondent no.7, respondent no.4 upon issuing a prior hearing notice of at least 7 days to the petitioners and the private respondents and after giving them an opportunity of hearing shall decide the said representation dated **July 15, 2024 annexure p-3 at page 38** to the writ petition by passing a reasoned order in accordance with law.

This exercise shall be carried out and completed by the respondent no.4 positively within a period of **6 weeks** from the date of receiving the report from the respondent no.7 and the reasoned order shall be communicated to the petitioner and the private respondents positively within a period of **1 week** from the date of the said reasoned order to be passed.

It is made clear that this Court has not gone into the merits of the rival contentions of the petitioner and the private respondents and they shall be at liberty to urge whatever points they wish to urge by relying upon whatever records they wish to rely upon before the respondent no.3 but the same shall not travel beyond the scope of the said representation dated **July 15, 2024**.

In the event reasoned order confirms encroachment then the respondent no.4 shall

communicate the reasoned order positively within one week from the date of the reasoned order to be passed to the respondent no.5, who shall take all necessary and consequential steps to give an immediate effect to the said reasoned order positively within a period of **5 weeks** from the date of the said reasoned order to be communicated to it in accordance with law.

It is made clear that this order shall not create any right or equity either in favour of the petitioner or in favour of the private respondents, if they do not succeed to their respective claims before the respondent no.4, strictly in accordance with law.

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

With the above observations and directions this writ petition **WPA 23439 of 2024** stands **disposed of** without any order as to costs.

(Aniruddha Roy, J.)