

18 01.8.2024
Sc Ct. no.2

WPA 22855 OF 2023

Ashish Bag

Vs.

The State of West Bengal & Ors.

Mr. Salil Kumar Maiti
Ms. Dolon Samanta.

... For the Petitioner

Mr. Supratim Dhar
Mr. Dhananjay Nayak.

.... For the Respondents
State

Mr. Raj Kumar Sain

.... For the Respondent
No. 7 to 12

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

Mr. Salil Kumar Maiti, learned advocate appears for
the petitioner.

Mr. Supratim Dhar, learned State advocate appears
for the State respondents.

Mr. Raj Kumar Sain, learned advocate appears for
the private respondent nos. 7 to 12.

The petitioner complains of an alleged illegal and
unauthorized construction and encroachment on the
PWD land at the behest of the private respondents. The
petitioner submitted a representation dated **June 1,
2023, Annexure-P4 at page 30** to the writ petition, *inter
alia*, before the respondent no.3 but the same has not yet
been considered.

Mr. Sain, learned advocate appearing for the private respondents submits that, the land on which encroachment has been alleged by the petitioner is not the PWD land. It is the land of the State under the domain of the Collector. Referring to a registered **Deed of Exchange, Annexure-P1 at page 22** to the writ petition he further submits that, the petitioner has also caused encroachment over the said public land and constructed unauthorized structure thereupon. The portion of the public land where the petitioner has encroached is not the land of the petitioner as would be evident from the said **Deed of Exchange**.

Per contra, learned counsel for the petitioner has denied and disputed the submissions made on behalf of the private respondents and it is submitted that, the petitioner has caused construction on his own riyati land.

After considering the rival contentions of the parties and upon perusal of the materials on record, the respondent no.3 is directed upon issuing a prior notice to the petitioner and the private respondents to cause a physical inspection of the alleged encroachment and unauthorized structure and then after giving them an opportunity of hearing shall dispose of the said representation of the petitioner dated **June 1, 2023** as referred to above by passing a reasoned order in accordance with law.

While dealing with the said representation the respondent no.3 shall also consider the allegation of the private respondents as to the encroachment and unauthorized construction caused by the petitioner on the selfsame public land.

In the event the respondent no.3 finds that, the subject land is not the PWD land then he shall immediately refer the matter before the respondent no.4 positively within a period of **one week** from the date of such finding. The respondent no.3 or the respondent no.4 as the case may be they shall take the decision on the said representation of the petitioner and the allegation of the private respondents after giving them an opportunity of hearing and by passing a reasoned order in accordance with law.

The entire exercise as directed above, shall be carried out and completed by the respondent no.3 or the respondent no.4 as the case may be positively within a period of **six weeks** from the date of communication of this order or from the reference to be made by the respondent no.3 before the respondent no.4. The reasoned order thereafter shall be communicated to the petitioner and the private respondents by the respondent no.3 or the respondent no.4 as the case may be positively within a **further** period of **two weeks** 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 claims of the parties. The petitioner and the private respondents shall be at liberty to urge whatever points they wish to urge by relying upon whatever records and documents they wish to rely upon before the respondent no.3 or the respondent no.4 as the case may be but the same shall not travel beyond the scope of the representation dated **June 1, 2023** and the allegation raised on behalf of the private respondents as recorded above.

In the event, the reasoned order passed by the respondent nos. 3 or 4 as the case may be confirms the alleged encroachment on the public land be it PWD or be it other than PWD but the public land, the appropriate jurisdictional authority shall take all necessary and consequential steps for removal of such encroachment in its entirety whoever has caused either the petitioner or the private respondents strictly in accordance with law but positively within a period of **six weeks** from the date of the said reasoned order to be passed.

It is made clear that, this order shall not create any right or equity in favour of the petitioner and the private respondents if they do not succeed to their respective contentions strictly in accordance with law.

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 22855 of 2023** stands disposed of, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)