

05.10.2024

Item No. 02

Crt.No.02

b.r.

WPA 25540 of 2024

Satyen Naskar & Ors.

-vs-

The State of West Bengal & Ors.

Mr. Rajdeep Bhattacharya

Mr. Suman Banerjee

..... for the petitioners.

Mr. Biswanath Samanta

.... For the State.

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

Mr. Rajdeep Bhattacharya, learned counsel appears for the petitioners.

Mr. Biswanath Samanta, learned State advocate appears for the State-respondents.

The petitioners complain of encroachment of their land by the Irrigation Department of the State and an illegal construction of a boundary wall on their land by the said Department of the State without acquiring the land. The petitioners submitted their representation dated **October 3, 2024, annexure p7 at page-33** to the writ petition, but the same has not yet been considered.

The avernment made from the writ petition specifically made in **Paragraph-7** therein shows that in the month of **July 2024**, the petitioners discovered the

encroachment and the representation was made on **October 3, 2024** about **three months** after the discovery of the alleged encroachment.

The petitioners pray for an interim order for not to proceed with the further construction of the boundary wall and in support, the learned counsel for the petitioners has relied upon an order of a Co-ordinate Bench dated **December 22, 2023, *In the matter of: Sk. Saiful Islam & Ors. -vs- State of West Bengal & Ors. reported at 2023 SCC Online Cal. 5625 rendered in WPA 28934 of 2023.***

After considering the submissions made on behalf of the parties and upon perusal of the materials on record, the **respondent no.8** is directed upon issuing a prior notice to the petitioners to cause a physical inspection of the alleged encroachment on the land of the petitioners in the light of the relevant land records and shall prepare a report. Copy of the report shall be provided to the petitioners and the **respondent no.6**.

This exercise shall be carried out and completed by the **respondent no.8** positively within a period of **four weeks** from the date of communication of this order.

After receiving the report from the **respondent no.8**, the **respondent no.6** upon issuing a prior hearing notice of at least **seven days** to the petitioners and after

granting them an opportunity of hearing shall dispose of the said representation dated **October 3, 2024, annexure p-7 at page-33** 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.6** positively within a period of **six weeks** from the date of receiving the report from the **respondent no.8** and the reasoned order shall be communicated to the petitioners positively within a period of **one week** from the date of the said reasoned order.

It is made clear that this Court has not gone into the merits of the claim of the petitioners and the petitioners 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.6** but the same shall not travel beyond the said representation dated **October 3, 2024**, as referred to above.

In the event, the reasoned order confirms encroachment, then the appropriate State Authority shall take an immediate decision either to exercise the **Direct Purchase Policy** to purchase the land of the petitioners or to demolish the boundary wall, as the case may be but the decision has to be taken and communicated to the petitioners positively within a

period of **four weeks** from the date of the said reasoned order to be passed by the **respondent no.6**.

In the event, the State opts for **Direct Purchase Policy**, the entire exercise must be and shall be completed including payment of money to the petitioners in accordance with law positively within a period of **six months** from the date of the reasoned order to passed.

In so far as the prayer for interim order is concerned as prayed for by the petitioners, it appears to this Court that the petitioners have already waited for about **three months** to complain of the alleged encroachment and then filed this writ petition. The boundary wall as alleged to have been constructed by the petitioners on its land by the Irrigation Department is for public purpose, if ultimately it appears that the land does not belong to the petitioners, passing an interim order of injunction shall prejudice the State Authority. As such there is no *prima facie* case made out by the petitioners nor any balance of convenience is in existence to pass an interim order. The order passed by the Co-ordinate Bench **In the matter of: Sk. Saiful Islam & Ors.(supra)** was passed in the facts of the case where the writ petitions were physically assaulted at the time of protest of construction of the road as would be evident in **Paragraph-3** of the said order. This is not the

fact in the instant case. Hence, the order would have no assistance to the petitioners.

In view of the above, the prayer for **interim order** stands **rejected** and **overruled**.

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 25540 of 2024** stands **disposed of**, without any order as to costs.

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

(Aniruddha Roy, J.)