

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

05 & 25 03.12.2024
Sc Ct. no.2

WPA 28572 OF 2024

Biswanath Halder & Ors.
Vs.
The State of West Bengal & Ors.

with

WPA 28144 of 2024

Chameli Halder
Vs.
The State of West Bengal and Ors.

Mr. Lakshmi Nath Bhattacharya
..... For the Petitioners
in WPA 28572 of 2024

Mr. Soumitra Bandyopadhyay,
Mr. Priyabrata Batabyal.
..... For the Respondent
Nos. 1 to 11 in
WPA 28572 of 2024

Mr. Pankaj Halder
Mr. Tapas Manna.
.... For the Private
Respondent no. 12 in
WPA 28572 of 2024
&
For the Petitioner in
WPA 28144 of 2024

Mr. Chandi Charan De, AGP
Ms. Reshma Chatterjee.
..... For the Respondent
Nos. 1 to 7 in
WPA 28144 of 2024

Mr. Lakshmi Nath Bhattacharya, learned counsel
appearing for the petitioners in **WPA 28572 of 2024** files
the affidavit-of-service, the same is taken on record.

Mr. Pankaj Halder, learned counsel appearing for the private respondent no. 12 in **WPA 28572 of 2024** submits that there is a connected writ petition, **WPA 28144 of 2024**, filed by his client which is appearing against **serial no. 25** of today's cause list, he prays for analogous consideration of both these writ petitions.

Mr. Chandi Charan De, learned Additional Government Pleader appears for the respondent nos. 1 to 7 in **WPA 28144 of 2024**.

Mr. Soumitra Bandyopadhyay, learned senior Government counsel appears for the respondent nos. 1 to 11 in **WPA 28572 of 2024**.

Parties by consent have agreed to proceed with both these writ petitions today itself for analogous consideration as the date of demolition is fixed on tomorrow i.e. **December 4, 2024**.

In Re : WPA 28572 OF 2024

The petitioners claim to be in permissive occupation in respect of a plot of land bearing **Dag No.7394** as pleaded in **paragraph 2** to the writ petition. Paragraph 2 is quoted below :

"2. That your petitioners stat that they along with other twelve persons have been carrying their business which is their only livelihood for last thirty years over the landed property lying under Mouza – Gilarchat, Dag No. 7394 as permissive possessioners which is rayati

property since they inducted as tenant by the erstwhile recorded owners and they have been carrying business after obtaining the trade License from the Panchayat Authority and by paying the electric charges to Distribution Company.”

Through this writ petition the petitioners have challenged the impugned order dated **December 13, 2023** passed by the respondent no.3, the appellate authority in **Appeal No.41** at **page 88** to the writ petition. Through the said impugned order the appeal preferred by the writ petitioners was dismissed and the decision of the authority holding that, the petitioners are encroachers and illegally occupied a portion in **L.R. Plot Nos.7393/7542** has been upheld as passed by the jurisdictional Executive Magistrate, Diamond Harbour dated **October 4, 2023**. The appeal petition, filed by the petitioners, is annexed to the writ petition as **Annexure-P6 at page 81** to the writ petition.

The issue involved in this writ petition has a short history.

The private respondent no.12 in this writ petition being the petitioner in **WPA 28144 of 2024** (for short the second writ petition) previously filed a writ petition, **WPA 6643 of 2022** at **page 39** to this writ petition. The previous writ petition shows that, the writ petitioners in the instant writ petition were not impleaded therein. The said previous writ petition was disposed of by a coordinate Bench by its order dated **January 31, 2023**

directing the fourth respondent therein to take the proceedings under **Section 10** of the **West Bengal Highways Act, 1964** (for short the 1964 Act) and to come to its logical conclusion in the manner and mode as directed therein. Pursuant to the said direction of the coordinate Bench, the impugned order dated **December 13, 2023** was passed. From the appeal petition at **page 81** to this writ petition it appears that, these petitioners had principally urged the point that, these writ petitioners being the appellants therein were not parties to the said previous writ petition. The other point sought to have been canvassed was the proceeding initiated under **Section 10** of the 1964 Act was all along bad in law and should be quashed; since the subject land belongs to the Collector, no proceeding could have been initiated under the 1964 Act. Beyond these points no other points were raised by these writ petitioners in the appeal in which the impugned order was passed.

Mr. Lakshmi Nath Bhattacharya, learned counsel appearing for the petitioners submits that, his clients have received the notice dated **August 14, 2023**, issued under **Section 10(1)** of the said 1964 Act, **Annexure-P2 at page 34** to the writ petition but before initiating any proceeding no demarcation of land with regard to the allegation of an alleged unauthorized occupation or encroachment was caused upon notice to the petitioners. Therefore, the entire proceeding stands vitiated and,

accordingly, he prays for quashing of the said impugned order dated **December 13, 2023**. He further submits that, before issuing the notice under **Section 10(1)** of the 1964 Act upon the petitioners, the authority has initiated proceeding under **sub-Section (3) to Section 10** of the 1964 Act.

Mr. Soumitra Bandyopadhyay, learned State counsel appears for the respondent nos. 1 to 11.

Mr. Pankaj Halder, learned counsel appears for the private respondent no.12.

Both the learned counsel for the respondents submit that, after a detailed fact finding inquiry being made in the light of the existing land records, it was found that the land in question being **L.R. Plot Nos.7393/7542** are PWD lands and vested with the State and on such land the writ petitioners have encroached and constructed their shop rooms thoroughly in an illegal and wrongful manner, which have to be demolished forthwith.

Referring to the document at **pages 53 and 54** to the writ petition being the Record of Rights learned counsel for the respondents deny and dispute that, the petitioners are in permissive occupation in respect of **Dag No.7394**.

Mr. Soumitra Bandyopadhyay, learned State counsel submits that, the points sought to be canvassed before this Writ Court were never raised before the

appellate authority by the writ petitioners. Therefore, the writ petitioners cannot agitate those points by challenging the impugned order which were not raised before the appellate authority.

Upon considering the rival contentions of the parties and upon perusal of the materials on record this Court, at the outset, thinks to reproduce the observations and findings from the impugned order dated **December 13, 2023** :

“Block Land and Land Reforms Officer, Mathurapur-II submitted that as per ROR the LR plot no.7393/7542, LR Khatian Nos.1/1 and 10096, J.L. No.107 under Mouza-Gilarchat within the jurisdiction of Raidighi Police Station, land measuring about 44 decimals each recorded in the name of Collector, Government of West Bengal and Irrigation Department, Government of West Bengal respectively. She also submitted report regarding demarcation conducted on 26.07.2023 vide her memo no. PWS/422(1)/BL&LRO /Math-II/2023 dated 28.07.2023. As per the field demarcation report, the present appellants i.e.(I) Dhananjay Halder (2) Ebadulla Sekh (3) Mozammel Molla and (4) Biswanath Halder have occupied Government land by constructing shop rooms in L.R. Plot No. 7542 under J.L. No. 107 under Mouza-Gilarchat.

Junior Engineer, PWD, Joynagar Sub Division submitted that the disputed land in question is being maintained by Public Works Department and the present appellants have made their illegal shop rooms over the said land.

Perused the case record and it appears that the L.R. Plot No. 7393/7542, L.R. Khatian Nos. 1/1 and 10096, J.L. No. 107 under Mouza-Gilarchat and said land is recorded in favour of Collector, Government of West Bengal, and Irrigation Department, Government of West Bengal respectively. Also perused the field demarcation report and it appears that the present appellants constructed shop rooms in L.R. Plot No. 7393/7542 J.L. No. 107 under Mouza-Gilarchat. The present appellants during

the hearing also admitted that they have occupied the said land.

Considering the submissions made by all the parties and the case record, it appears that the present appellants have encroached land which is being duly maintained by the Public Works Department. Therefore, in the light of the provisions of the West Bengal Highways Act, 1964, the order dated 4.10.2023 as passed by Executive Magistrate, Diamond Harbour is hereby being upheld. Executive Engineer, P.W.D., Diamond Harbour Division is hereby directed to take necessary action for the removal of the aforesaid encroachments.

Thus, the instant appeal filed by the appellants is hereby considered and disposed of. The order dated 04.10.2023 passed by the Executive Magistrate, Diamond Harbour Sub-Division is hereby upheld. All the parties shall be informed accordingly.”

The observations and findings in the impugned order shows steps were taken and the impugned order was passed only in respect of **L.R. Plot Nos. 7393/7542** and not in respect of **Dag No. 7394** as pleaded in **paragraph 2** to the writ petition. The petitioners have not pleaded how their rights or interests, if any, have been affected under the said impugned order passed in the writ petition as the impugned order was restricted to **L.R. Plot Nos.7393/7542** only. The appeal petition also does not speak as to how the rights of the petitioners, if any, in respect of **Dag No.7394** have been affected in the light of the impugned order. The petitioners have not disclosed any document to show that, the illegal and unauthorized construction as alleged against the petitioners have been done or caused to have been done with prior written permission of the appropriate State

authority on the subject land in respect whereof the impugned order has been passed.

It is settled law that, to avail of remedy before this Constitutional Court in exercise of its power under Article 226 of the Constitution of India, the aggrieved party must clearly establish that any of his rights be it constitutional or be it legal has been infringed by an Article 12 authority. Since the petitioners have not demonstrated whether they have any right over the said **L.R. Plot Nos. 7393/7542** and the impugned order is restricted only for those **two plots**, this Court is of the firm view that, no right of the petitioners has been infringed by the respondent authorities under the said impugned order dated **December 13, 2023**.

Inasmuch as, the notice received by the petitioners under **Section 10(1)** of the said 1964, Act as would be evident from **pages 34 and 35** to the writ petition, would clearly demonstrate that, the plots in question therein were **L.R. Plot Nos. 7393/7542** and **not Dag No. 7394**.

It is clarified and made clear that, this Court has not adjudicated the rights and interests of the petitioners, if any, in respect of **Dag No. 7394** and this Court has not gone into such question at all.

This order shall not be construed that, the petitioners might have any right or interest in respect of **Dag No. 7394** as this Court has not gone into that question at all.

In view of the foregoing discussions and reasons the impugned order dated **December 13, 2023** is not interfered with and the same **stands affirmed** in so far as **L.R. Plot Nos.7393/7542** are concerned.

It is clarified that, the impugned order can be executed in accordance with law but restricted to **L.R. Plot Nos.7393/7542** only.

Accordingly, this Court is of the firm view that, this writ petition is devoid of any merit and this writ petition, **WPA 28572 of 2024** stands **dismissed**, without any order as to costs.

In Re : WPA 28144 OF 2024

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

Mr. Pankaj Halder, learned counsel appears for the petitioner.

Mr. Chandi Charan De, learned Additional Government Pleader appears for the respondent nos. 1 to 7.

Mr. Lakshmi Nath Bhattacharya, learned counsel has submitted that, he has not received the Vakalatnama on behalf of the private respondent nos. 8 to 11. Accordingly, he refrains himself to represent these private respondents.

In view of the detailed order passed in **WPA 28572 of 2024** no order is required to be passed in this writ petition and in the light of the same this writ petition, **WPA 28144 of 2024** stands **disposed of**, without any order as to costs.

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

Photocopy of this order be kept with the records of each of these writ petitions.

(Aniruddha Roy, J.)