

08.04.2024
rc/ct.no.10
Item No.733

WPA No. 27773 of 2023
Jalal Uddin Molla
Versus
The State of West Bengal & Ors.

Mr. Debajyoti Deb
Mr. Tamal Ghosh
Ms. Somdyuti Parekh ...for the petitioner

Mr. Arindam Chattopadhyay
Mrs. Lipika Chatterjee ...for the State

Mr. Manjit Singh ..for the private respondents

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

Heard learned counsels for the parties.

The petitioner claims to be the recorded owner of the plot in question and submits that the private respondents have raised unauthorised construction by encroaching upon PWD Road (Kolkata to Basanti State Highway) adjoining his property, thereby obstructing his ingress and egress. The petitioner submitted a representation before the authority in this regard pursuant to which the plot in dispute has been demarcated by the Block Land and Land Reforms Officer, Basanti, South 24 Parganas and upon detection of unauthorised construction on the State highway, notice under Section 10(1) of the West Bengal Highways Act, 1964 (hereinafter referred to as "the Act of 1964") has been issued upon the alleged encroachers.

Placing reliance on the report submitted by the Assistant Engineer, Canning Highway Sub-Division , PW (Roads) Department on January 08, 2024, learned counsel for the State respondents submits that the notice under Section 10 of the Act of 1964 has been issued upon the private respondents directing them to remove the unauthorised construction made by them on the State highway within a stipulated timeframe.

Learned counsel for the private respondents submits that though the petitioner has alleged that the private respondents have raised the allegedly unauthorised construction sometime in the end of 2021, they have been occupying the shop rooms therein for more than 40 years. The petitioner, therefore, has not come before this Court with clean hands and the writ petition ought to be dismissed on that score alone. Learned counsel has placed reliance on the authority in **K.D.Sharma Vs. Steel Authority of India Limited & Ors.** reported in **(2008) 12 Supreme Court Cases, Page 481** in support of his contention.

It is trite law that if the petitioner is guilty of suppression of material fact or relevant fact or of misleading the Court, the writ petition may be dismissed at the threshold without going into the merits of the same.

In the case in hand, the petitioner purchased the plot in question on April 19, 2021 and found the private respondents to make permanent construction of shop

rooms sometime in the end of the same year. Such factual issue as to the date and period of such construction is a matter of evidence and cannot be dealt with by this Court in exercising extraordinary jurisdiction under Article 226 of the Constitution of India. However, it is not in dispute that the shops runs by the private respondents are situated on State highway.

Since notice under Section 10(1) of the Act of 1964 has been issued by the authority, the concerned authority, being the 4th respondent herein, is directed to take the proceedings to its logical conclusion within two months from the date of communication of this order, upon affording reasonable opportunity of hearing to all the interested persons including the petitioner and the private respondents, in accordance with law.

It is made clear that this Court has not gone into the merits of the case and the concerned authority shall be at liberty to deal with the matter independently and without being influenced by any observation which may have been made in this order.

With the above observations and directions this writ petition is disposed of.

There shall however be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Suvra Ghosh,J)