

D/L
Item No. 31
02.09.2025
KOLE
266306

WPA 1971 of 2025

Sk. Asifur Rahaman & Ors.
-Vs.-
The State of West Bengal & Ors.

Mr. Subhendu Bandyopadhyay,
Ms. D. Ganguly,

.....for the petitioners.

Mr. Asish Kumar Guha,
Mr. Rajendra Chaturvedi,

...for the State.

This writ petition assails an order dated January 3, 2025, passed by the Sub-Divisional Magistrate, Sadar, Hooghly in Case No 4 of 2024 registered under the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962 (hereinafter referred to as ‘the said Act of 1962’). The instant writ petition has been filed on January 22, 2025.

By the order impugned the Sub-Divisional Magistrate, Sadar, Hooghly has held that the petitioners are in illegal occupation of a “portion” of land “vested in the name of the Collector” and that they have raised constructions thereon which are obviously unauthorised. The said Sub-divisional Magistrate has, therefore, in exercise of his powers under the said Act of 1962 directed the petitioners to demolish the unauthorized constructions within January 25, 2025 and to vacate the subject land and has put the petitioners on notice that upon the petitioners failing to demolish the unauthorized construction, the said authority itself would initiate demolition

proceeding in order to remove the illegal occupants from Government's land at the cost and expense of the occupants.

The learned Advocate for the petitioners has handed up to the Court a copy of a Memo No. 2033/10 dated August 21, 2025 issued by the Block Development Officer, Pandua Development Block wherefrom it appears that the said Block Development Officer has proceeded to execute an order dated February 19, 2025 for demolition of the unauthorized constructions. Let the same be kept with the records.

Learned Advocate for the State respondents has handed up a copy of the instructions made over to him by the Sub-divisional Magistrate and Sub-divisional Officer wherefrom it appears that since no step was taken by the writ petitioners for removing the unauthorized construction as directed by the said order dated January 3, 2025, an order was passed by the Sub-divisional Magistrate on February 19, 2025 directing the Block Development Officer, Pandua to make arrangements for removal of the unauthorized construction. Let the same be taken on record.

Section 7 of the said Act of 1962 provides for an appeal against any order that may be made under the Act in the following manner:-

“S. 7. Appeal and review.

(1) An appeal from an order made under this Act shall lie to-

(a) The Commissioner of the Division, where the order is made by the Collector and

(b) The Collector, where the order is made by an officer specially appointed under sub-clause (b) of clause (1) of Section 2,

If preferred within fifteen days from the date of the order appealed against and the decision of the Commissioner or the Collector,

as the case may be, on such appeal shall, subject to the provisions of sub-section (2), be final:

Provided that the appellate authority on being satisfied that the appellant was prevented by sufficient cause from filing the appeal in time may entertain the appeal even after the expiry of the said period of fifteen days.

(2) The State Government, may, of its own motion or on an application made to it by any person aggrieved against the order of the appellate authority within thirty days from the date of such order, on grounds of gross error of facts or of law or of both facts and law, call for an examine the record of the appeal and may make such orders thereon as it thinks fit.”

The order dated January 03, 2025 impugned herein, is clearly one that has been passed by an officer under Section 7(1)(b) of the said Act of 1962.

If any exception is required to be taken thereto, the same should be done in the manner provided in the said Act of 1962. This Court is aware that existence of an alternative remedy is not a bar to entertain a writ petition but that does not mean that power under Article 226 can be exercised even in a case where there is neither any violation of the principles of natural justice, nor violation of any fundamental right, nor is there any point of lack of jurisdiction, nor any challenge to the vires of any Act involved. The petitioner’s assertion that a civil suit is pending where an order of injunction has been passed cannot prop the writ petition. The civil suit is against a private party and the State or the Collector is no way involved in it. An order of injunction passed in the said suit would not

apply to the real owner of the land in question if such owner is not a party thereto.

Be that as it may, in view of the fact that a specific alternative remedy is available to the petitioners in the form of an appeal against the order dated January 3, 2025, which has been impugned in this writ petition, this writ petition is not entertained.

WPA 1971 of 2025 is dismissed without, however, any order as to costs.

It is clarified that dismissal of this writ petition shall not prevent the petitioners from approaching the appropriate appellate forum in terms of Section 7 of the said Act of 1962 in accordance with law.

If any appeal is preferred by the writ petitioners, the Appellate Authority shall be free to take any decision in the matter strictly in accordance with law.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties after completion of all necessary formalities.

(Om Narayan Rai, J.)