

23&31 27.03.2025
NB Ct. 17

WPA 5805 of 2025

Shital Shaw
Vs.
The State of West Bengal & Ors.

With

WPA 6899 of 2025

Shital Show
Vs.
The State of West Bengal & Ors.

Mr. Ayan Banerjee,
Ms. Debasree Dhamali,
Ms. Riya Ghosh.
...for the petitioner.

Mr. Arpan Guha,
Mr. Saikat Dey.
...for the respondent no.7.

Mr. Sirsanya Bandopadhyay Id.SSC,
Mr. Amritalal Chatterjee.
...for the State.

Mr. Ashim Kumar Ganguly Id.AGP.,
Mr. Bellal Shaikh.
...for the State in WPA 6899 of 2025.

The two writ petitions being connected ones are taken up for hearing together.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is the owner of the plot nos.2 and 4 in respect of which enjoys an injunction from a civil Court while there is a dispute regarding plot no.3 about the same being encroached upon or an illegal construction being done there. A notice was issued under Section 3 of the *West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962* to the petitioner. The petitioner appeared on 17.03.2025 and asked for the inspection report and the same was provided. On

19.03.2025, he controverted the inspection report and prayed for an adjournment to adduce evidence. But, the petitioner was not granted any opportunity to adduce evidence although he prayed for the same. There was a gross violation of principles of natural justice. An order was passed and the same was communicated to him on 24.03.2025 asking him to vacate the premises by 28.03.2025. Action was scheduled to be taken even within the period of appeal of 15 days. The requirement of Section 4 of the Act of 1962 has not been fulfilled. Reliance is placed on decisions reported at *(2017) 15 SCC 719* and *(2010) 13 SCC 336*. It is also pertinent to mention that inspection did not take place in the presence of the petitioner. The inspection report wrongly shows a portion of the petitioner's property inside plot no.3.

Learned counsel appearing on behalf of the private respondents submits as follows. The private respondents and some others had moved a Public Interest Litigation before this Court claiming that the land in question was initially used as a cemetery for children. Later on, the present petitioner started to encroach upon such public land. There was a direction passed upon the District Magistrate to take necessary steps. Pursuant to a direction passed by the District Magistrate, a joint inspection was done by the BL & LRO. The petitioner and his family members were present. So were the private respondents and others although they were all kept outside the area that was barricaded for the purpose of measurement of land. After a detailed examination and measurement, the map was prepared. At present the petitioner is trying to question the said map by

falsely claiming that he was not present during inspection and that the map wrongly indicated that some portion of the petitioner's land was falling within plot no.3.

Learned counsel appearing on behalf of the State denies the allegations and submits that a notice for inspection was given to the petitioner. There is a provision of appeal, which should be resorted to.

It appears that the inspection was done pursuant to a proceeding in a Public Interest Litigation. After the District Magistrate passed an order, an inspection was done. If the petitioner challenges the same, it would be a question of fact to be decided by the concerned authority.

Furthermore, there is no document to show that the petitioner had filed any application before the original authority claiming that he wanted to adduce any evidence.

However, all these matters can fairly be taken up before the Appellate Authority.

Therefore, the writ petition is disposed of by granting liberty to the petitioner to prefer an appeal within fifteen days from this date. In the event the petitioner files such an appeal within fifteen days from this date, the respondent authorities shall take no coercive action against the petitioner till the day on which the appeal is placed for hearing before the Appellate Forum. In such event, the Appellate Authority shall consider the appeal on merits and in accordance with law and shall also decide application for stay made by the petitioner, if any, in accordance with law.

As affidavits were not called for, allegations contained in the writ petition are deemed not to have been admitted.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)