

28th May, 2025
(S/L No.1)
Ct. No.7
(SKB)

W.P.A. 12117 of 2025

Smt. Manjula Mithia and another
Versus
The State of West Bengal and others

Mr. Raghunath Chakraborty,
Mr. Soumava Mukherjee,
Mr. Bhagbat Chaudhuri,
Mr. Monojit Chatterjee
... for the petitioners.

Mr. Swapan Banerjee,
Mr. Diptendu Narayan Banerjee,
Mr. Soumen Chatterjee
... for the State.

Mr. Amitava Dev,
Ms. Paulomi Ghosh
... for the private respondent.

1. In questioning the legality of a notice dated 23rd May, 2025, served upon the petitioners, directing them to remove unauthorized construction from the land in question in compliance with the order passed in Case No. 02/Eviction/SDO/DH of 2024-25, the present writ petition has been preferred.
2. Mr. Chakraborty, learned advocate for the petitioners, submits that the authorities initially proceeded under the provisions of the West Bengal Panchayat Act, 1973 (hereinafter referred to as the 'Act of 1973'). However, they subsequently concluded that the provisions of the Act of 1973 had been erroneously invoked, and accordingly, they decided to proceed under the West Bengal Public Land (Eviction of Unauthorized

Occupants) Act, 1962 (hereinafter referred to as the 'Act of 1962').

3. He submits that the SDO concerned had initiated a proceeding being Case 02/Eviction/SDO/DH of 2024-25, although, according to him, the appropriate authority to initiate, conduct, and conclude such proceeding is the Collector. He further submits that, prior to the initiation of the said proceeding, no notice under Section 3 of the Act of 1962 was served upon the petitioners, which, in his view, is a mandatory requirement. He contends that the non-fulfillment of this mandatory requirement has vitiated the entire proceeding. It is also submitted that a statutory appeal has since been preferred before the Commissioner of the Division. He prays for an appropriate order staying in operation of the notice dated dated 23rd May, 2025.
4. Mr. Dev, learned counsel appearing for the private respondent, vehemently opposes the contentions of the petitioners. He submits that the proceeding was initiated in compliance with an order passed by a Co-ordinate Bench of this Court. Therefore, according to him, there was no irregularity or illegality in the conduct of the proceedings.
5. Mr. Banerjee, learned counsel for the State, produces certain documents and submits that the entire proceeding was conducted and concluded in compliance with an order passed by a Co-ordinate

Bench of this Court. He further submits that if this Court were to pass any order restraining the respondents from taking further steps, it would, in effect, amount to sitting in appeal over the decision of the Co-ordinate Bench. The documents, as produced by Mr. Banerjee is taken on record.

6. Heard the learned counsel for the respective parties and perused the materials on record.
7. The record reveals that Shyamapada Mithia @ Meta and two others had preferred a writ petition, being WPA 20715 of 2021, alleging that the private respondents, who are the petitioners in the present writ petition, had encroached upon certain lands vested in the State and had constructed structures thereon. The record further reveals that a Coordinate Bench of this Court disposed of the said writ petition with a direction to the concerned respondents to consider and dispose of the petitioners' representation in accordance with law, after affording an opportunity of hearing to all necessary parties, within the time stipulated in the order.
8. The record reveals that, alleging violation of the said order, a contempt proceeding was also initiated, and a Rule was issued therein. However, in response to my query, it has been submitted by the private respondent that the contempt proceeding has since been disposed of and the Rule discharged.

9. Admittedly, the record of rights indicates that the land is vested in the State. The report submitted by the B.L.& L.R.O. had conceded that the land is vested land. Initially, the authorities proceeded to evict the unauthorized occupants under the provisions of the West Bengal Panchayat Act, 1973. However, they subsequently concluded that the land in question is public land, and that the proceedings ought to be conducted under the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962. Accordingly, the aforesaid proceeding, being Case No. 02/Eviction/SDO/DH of 2024-25, was initiated.

10. For an effective resolution of the issue raised in the writ petition, it would be appropriate to refer to the definition of 'Collector' under Section 2(2) of the Act of 1962, which reads as follows:

“2(1). “Collector” means—

(a) In Calcutta, the Land Acquisition Collector, Calcutta, and

(b) Elsewhere, the Chief Officer in charge of the revenue administration of the district, and includes [and Additional District Magistrate, a Sub-divisional Magistrate, and] any [Executive Magistrate], specially appointed by the State Government to perform all or any of the functions of a Collector under this ;....”

11. Therefore, a plain reading of the definition of the term ‘Collector’ reveals that it includes the Sub-Divisional Magistrate or any Executive Magistrate. Consequently, the SDO has the authority to conduct proceedings under the Act of 1962. It is needless to observe that the

order passed by the SDO is an appealable order, and an appeal lies before the Commissioner of the Division.

12. Mr. Chakraborty submits that an appeal has been preferred and is currently pending final adjudication before the Commissioner of the Division. However, the State vehemently disputes the petitioners' contention regarding the pendency of the appeal before the Commissioner. Furthermore, the order passed by the SDO records that the petitioners participated in the proceedings. Mr. Chakraborty, however, strongly objects to this finding, contending that it was erroneously recorded that the petitioners participated in the proceeding initiated by the SDO under the Act of 1962.
13. If any incident or occurrence in connection with any proceeding is not properly recorded in the order, the aggrieved person's sole remedy is to bring this to the attention of the presiding officer or judge concerned within a short span of time, i.e., while the matter remains fresh in their memory. Otherwise, such person shall be precluded from raising the issue at a later stage.
14. However, although the petitioners contend that an appeal is pending before the Commissioner of the Division, no material has been placed before this Court to demonstrate that any appeal is pending or that any application seeking a stay of the operation of the order

passed by the SDO was filed before the appellate authority

15. Taking note of this fact, I am unable to persuade my judicial conscience to hold that the petitioners have a strong prima facie case in their favor. I also find no justification to interfere in the matter. However, it is clarified that the petitioners are at liberty to approach the Commissioner of the Division with an application for an interim order. If such an application is filed, the stay application shall be dealt with promptly and disposed of without undue delay.
16. The writ petition is, accordingly, disposed of.
17. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Partha Sarathi Chatterjee, J.)