

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Ct.551 **08.12.25**
Item No.5 Sws.M

WPA 13634 of 2025

**Samser Ali Mallick and Ors.
Vs
The State of West Bengal & Ors.**

Mr. Rabiul Islam
Mr. Jayed Hossain
Mr. M. Rahaman
...for the petitioner

Mr. Uttam Kumar Bhattacharyya
....for the respondent No.6.

Mr. Salil Kr. Maiti
Ms. Dolan Samanta
...for the respondent No. 9
Mr. Jyoti Prakash Chatterjee
Mr. Amartya Pal
...for the State

1. This writ petition seeks a direction on the District Magistrate and Collector, Purba Medinipur for expeditious disposal of an appeal preferred by the petitioner under Section 7(b) of the West Bengal Public Land (Eviction of Unauthorised Occupant) Act, 1962.
2. It is the petitioners' case that in a proceeding initiated under Section 3(1) of the said Act of 1962, an order dated April 3, 2025 had been passed against the petitioners by the Sub-Divisional Magistrate, Tamluk, Purba Medinipur, thereby directing all encroachers (including the petitioners)

to remove their encroachment over the government land within fifteen days from the date of receipt of the order.

3. The petitioners have assailed the said order before the respondent no.2, i.e, the District Magistrate and Collector, Purba Medinipur by filing an appeal. Such appeal is pending.
4. Learned advocate appearing for the petitioners hands up to Court a copy of a letter dated November 24, 2025 issued by the Additional Executive Officer, Purba Medinipur, Zilla Parishad and submits that there is a threat of demolition looming large. The said letter is taken on record.
5. It is submitted by the learned advocate appearing for the petitioners that the said letter has been served upon the petitioners during pendency of the petitioners' appeal. It is submitted that by the said letter the Additional Executive Officer, Purba Medenipur, Zilla Prarishad has directed the petitioners "to remove the unauthorised encroachment within 09-12-2025" with a caution that if the petitioners defaulted in complying with the notice, encroachment would be removed "by the Purba Medinipur Zilla Parishad authority on 09-12-2025 and the cost will be realized under Public Demand Recovery Act, 1913".

6. The petitioners submit that the petitioners had lodged the appeal before the appellate authority on April 11, 2025 and their appeal has not been heard as yet thus depriving them of the opportunity to test the order dated April 3, 2024 passed by the Sub-Divisional Officer and avert demolition.
7. Learned advocate appearing for the State respondents however, submits that according to instructions given to him, such appeal was filed on April 21, 2025.
8. It is, therefore, not in dispute that an appeal has indeed been preferred by the petitioners before the appellate authority under Section 7(b) of the said Act of 1962 within the period of limitation prescribed in the said statute.
9. It is submitted on behalf of the petitioners that despite the appeal having been filed as far back as April 2025, the appellate authority has not taken the same for consideration and even the petitioners' prayer for interim order which has been made in the said appeal has not yet been considered. It is further submitted that if, during pendency of the said appeal, the order impugned before the appellate authority is executed in terms of the directions of the Sub-Divisional Officer, Tamruk, Purba Medinipur, the petitioners' appeal would become infructuous and the petitioners would suffer irreparably.

10. Learned advocate appearing for the respondent no.9 submits that the petitioners' appeal has been filed before a wrong forum and that appeal against the order passed by the Sub-Divisional Officer must have been filed before the Commissioner of the Division. In support of his contention he relies on a decision of this Hon'ble Court in the case of *Gouranga Kamilya & ORs. vs. The State of West Bengal & Ors. in WPA 12173 of 2025*, decided on *June 3, 2025*.
11. Heard learned advocates appearing for the respective parties and considered the material on record.
12. In the case at hand the order dated April 03, 2025 that has been passed by the Sub-Divisional Officer in the proceeding under Section 3 of the said Act of 1962 is actually an order passed by an officer specially appointed under Section 2(1)(b) of the said Act of 1962. In terms of Section 7(1) (b) of the said Act of 1962, i.e., the respondent no.2 would be the appellate authority and as such the petitioners have rightly approached the District Magistrate in appeal against the order passed by the Sub Divisional Magistrate.
13. In the case of *Gouranga Kamilya (supra)*, the Court was considering a situation where the initial order itself had been passed by the District Magistrate & Collector in a proceeding initiated under the said Act of 1962. Such order would evidently be appealable

before the Commissioner of the Division under Section 7(1)(a) of the said Act of 1962. Such is not the case here.

14. Since the petitioners have lodged the appeal within the prescribed period of limitation, and the appeal has not yet been considered by the appellate authority for reasons not attributable to the petitioners, it would be unfair to allow the order to be executed prior to the petitioners' prayer for interim order being considered by the appellate authority.
15. In such view of the matter, the respondent no.2 is requested to take up the petitioners appeal for hearing expeditiously. Since, there is a threat of execution of the order dated April 3, 2025, it is expected that respondent no.2 would consider the petitioners prayer for interim relief in the said appeal filed by the petitioners before it within a period two weeks from the date of communication of this order.
16. Since the order passed by the Sub Divisional Authority dated April 3, 2025 has not been executed as yet, it is expected that the respondents shall not take any step to execute the said order till the time the petitioners' prayer for interim relief in the appeal pending before the appellate authority is considered by the appellate authority.
17. It is clarified that this Court has not gone into the merits of the petitioners' case and that this order

shall not be treated as mandate to the District Magistrate to pass an interim order in favour of the petitioners. The appellate authority shall be free to decide the appeal as well as the petitioners' prayer for interim order strictly in accordance with law, without being influenced by any observation made herein.

18. Since no affidavit has been called for, the allegations made by the petitioner against the respondents are deemed not to have been admitted.
19. **WPA 13634 of 2025** stands **disposed of** with the above observations.
20. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities.

(Om Narayan Rai , J.)