

In the High Court at Calcutta

Constitutional Writ Jurisdiction

Appellate Side

Judgment (2)
Moumita
Daily list Item No. 5
Court No. 2

Present :

The Hon'ble Justice Aniruddha Roy

W.P.A. 24454 of 2025

Biswanath Swarnakar & Anr.

Vs.

The State of West Bengal & Ors.

For the Petitioners : Mr. Samik Sarkar, Adv.

For the State : Mr. Biswajit De, Adv.

Heard on : 31.10.2025

Judgment on : 31.10.2025

Aniruddha Roy, J.:

1. Upon urgency being pleaded and since this Court is assigned with the determination of the regular bench having determination over the cause-of-action in the writ petition, this writ petition has been taken up for consideration.
2. Affidavit-of-service, filed in Court today, is taken on record.
3. The writ petitioners have a chequered history of litigations in respect of a piece of Government land, where the record shows the petitioners are in unauthorized occupation. The petitioners have already applied before the jurisdictional Land Reforms and Tenancy Tribunal praying for direction upon the jurisdictional state authority to issue patta in favour of the petitioners.

4. The history of litigation began in 2017, when one Adhir Pal claiming himself to be the owner of the adjacent land filed the writ petition **WPA 30358 of 2017** alleging that these writ petitioners have encroached a portion of the Government land immediately in front of his dwelling house and started construction and as a result the egress and ingress of Adhir Pal was resisted, to his property.
5. Series of orders both by co-ordinate bench and Hon'ble Division Bench are there and finally the co-ordinate bench in one such order dated **February 7, 2025** in **WPA 2640 of 2025** passed a direction upon the jurisdictional District Magistrate (DM) to consider the appeal preferred by these writ petitioners under **Section 7 of the West Bengal Public Land (Eviction of Unauthorized Occupation) Act, 1962** (for short 1962 Act).
6. Following the said direction and pursuant thereto the order impugned dated **September 24, 2025** has been passed by the jurisdictional DM whereunder DM was of the opinion that these petitioners were found to be encroachers on the subject State land and accordingly the jurisdictional Sub-Divisional Magistrate and Sub-Divisional Officers were directed to take legal action with the official assistance of the local police authority for removal of the unauthorized encroachers on the Government land immediately and report was directed to be filed on or before **October 31, 2025**.
7. Thus being aggrieved by, these writ petitioners have challenged the said impugned order dated **September 24, 2025**.
8. Mr. Samik Sarkar, learned counsel appearing for the petitioners submits that the petitioners are occupying the State Government land for nearly 30

to 40 years. In support, he has placed a certificate dated **January 11, 2018** issued by the Pradhan of the concerned bench **Annexure p-1 at page 40** to the writ petition. Another identical certificate of 2023 is available **at page 41** to the writ petition. He then refers to the two communications one issued by the jurisdictional B.D.O. dated **September 7, 2018** and other one by the jurisdictional A.D.M. and D.L. & L.R.O. requesting the jurisdictional D.L. & L.R.O. to consider the case of these writ petitioners for granting patta.

9. Learned counsel for the petitioners submits that the petitioners have already instituted a proceeding being **O.A. No. 3420 of 2023** which is pending before the jurisdictional land tribunal claiming patta over the same land. Learned counsel for the petitioner submits that yesterday the State officials have visited the premises and demolished part of the unauthorized construction on the subject land.
10. Learned Counsel for the petitioner submits that on a close scrutiny of the impugned order dated **September 2024, 2025** passed by the DM, it would be evident from that the DM has not considered while disposing of the statutory appeal that the petitioners are occupying the subject land for nearly 30 to 40 years and identically placed persons have been granted patta whereas the petitioners have not yet been granted patta. He further submits that these inequal treatments were never considered by the DM.
11. Learned counsel further submits that petitioner, under the statute, has right to review of the said impugned order dated **September 24, 2025**.

12. Mr. Biswajit De, learned State Counsel submits that the impugned order was passed on the basis of the **admission**, as reflected in the said impugned order, made on behalf of the petitioners that they are **unauthorized occupants** in respect of the state land. This, according to the learned State Counsel, is sufficient reason to justify the impugned order. The learned State Counsel prays for an immediate dismissal of the writ petition.

Decision:

13. After hearing the rival contentions of the parties and on perusal of the materials on record, it appears to this Court that, the records appended to the writ petition, the orders passed from time to time by the co-ordinate bench and the Hon'ble Division Bench on no uncertain terms show that the petitioners are encroachers and in an unauthorized occupation of the subject piece of Government land.
14. The relevant portion from the impugned order is quoted below:

*"Whereas,
Shri Biswanath Swarnakar, being the writ petitioner no. 1 and Shri Adhir Pal, being the respondent no. 9, in WPA No. 2640 of 2025 were present during the hearing along with their authorized Ld. Advocates representing them and the State Jurisdictional Authorities were also present.*

Whereas, during the hearing, the petitioner no.1, namely, Shri Biswanath has admitted in the presence of his authorized Ld. Advocate, representing him that he is in unauthorized occupation of Collector's land at Plot No. 28/2122 and 28/2316, measuring an area of approx. 3.5 dec., lying adjacent to

L.R. Plot No. 706/2180 in Khatian No. 1 of Mouza-Pattabuka, J.L. No. 87, P.S.-Karimpur, Dist.-Nadia, being classified as 'Rasta' and 'Naynajali', vis-à-vis, Shri Adhir Pal, being the respondent no. 9 in the instant writ petition has also admitted during the hearing, in the presence of his authorized Ld. Advocate, representing him that he is also in unauthorized occupation of Collector's land at the same place, measuring an area of approx. 4.63 dec., which has been noted and recorded those admissions accordingly.

Whereas, the Sub-Divisional Land & Land Reforms Officer, Tehatta, Nadia, during the hearing, has stated that apart from those above admissions of Shri Biswanath Swarnakar, inter alia, Shri Adhir Pal to this writ petition, are also in unauthorized occupations of several Collector's land since long back, till date as the habitual offenders, which in his considered view, ought to be removed in accordance with law, without delay, for the ends of natural justice."

15. On a close scrutiny of the above quoted portion from the impugned order, this Court is of the firm view that, sufficient reasons are mentioned in the impugned order by the DM while passing it and came to a finding that the petitioners are encroachers in respect of the subject land. The alleged unequal treatments, if any, to the petitioners by the State could not have been within the scope of the adjudication by the DM under **Section 7 of the said 1962 Act**. The authority of the DM was very limited only to ascertain whether an unauthorized occupation is there on a Government land or not.

16. In the event, the appellate authority is of the opinion that unauthorized occupation is there on a Government land, and the appellate authority has jurisdiction to direct forthwith removal of the said unauthorized occupation and exactly the same finding has been made in the impugned order.
17. It is made clear that, this Court has not gone into the merits of the claim of the petitioner with regard to claiming patta over the land, which is pending before the jurisdictional land tribunal and has not opined anything on the said issue. The jurisdictional land tribunal shall be free to decide the issue pending before it in accordance with law, with a request to come to its reasonable conclusion as expeditiously as possible.
18. In view of the forgoing reasons and discussions, this Court is of the considered view that the said impugned order dated **September 24, 2025 at page 198** to the writ petition does not warrant any interference and accordingly the same is not interfered with and stands affirmed.
19. Accordingly, this writ petition **WPA 24454 of 2025**, stands **dismissed**, without any order as to costs.

(Aniruddha Roy, J.)