

ASR 5.
Ct. no. 24.
8.08.2025

WPA 27817 of 2022

With

CAN 2 of 2023

Basudeb Raul

Vs.

State of West Bengal & Ors.

Mr. Subhadeep Chatterjee

Ms. Aritra Kundu

.....For the petitioner

Mr. Soumitra Bandopadhyaya

Mr. Subhasis Bandopadhyay

.....For the State

Mr. Balaram Pandit

Mr. Arghadip Das

....For the respondent no 6

Respondent authority in pursuance to an order of a Co-ordinate Bench of this court in WPA 5374 of 2022 (Sanjita Manik -Vs- State of West Bengal) vide its order dated 22nd July, 2022 issued a memo to the petitioner on 21st September, 2022 and directed the petitioner to appear before the chamber of the Executive Engineer PWD, requiring the petitioner to produce all deeds and documents in support of his possession over Government land bearing plot no. 408 in front of plot no. 204, Mouza -Chakpur, Satampur under police station Belda in the District of Paschim Medinipur. Thereafter, a notice under Section 10(1) of West Bengal Highways Act, 1964 was issued by the Assistant

Engineer, PWD, Kharagpur Sub Division upon the petitioner on 29th September, 2024.

The matter was referred to the SDO, Kharagpur, wherein the SDO, Kharagpur was issued a notice under Section 10(2)/10(3) of the West Bengal Highways Act, 1964 for personal hearing of the petitioner.

The petitioner appeared before the SDO in personal hearing and placed his reply to the notice. After hearing the petitioner, the SDO concerned has passed an impugned order on 7th December, 2022, which is impugned before this court.

Learned counsel for the petitioner challenged the order on three fold grounds:

Firstly, it is the contention of the petitioner that before passing the order an enquiry was held by the concerned Block Land & Land Reforms Officer in respect of demarcation of the land under encroachment the said report was not served upon the petitioner before passing the impugned order. Thereby the petitioner was not given proper hearing. Thus the impugned order suffers violation of natural justice.

Secondly, it has been challenged by the petitioner that the concerned authority, who served the notice under Section 10(1) of the West Bengal Highways Act, 1964 is not authorized person to issue such notice, i.e. the proceeding initiated by the authority concerned is without jurisdiction.

Thirdly, the concerned SDO, that is, Sub-Divisional Magistrate, Kharagpur under Kharagpur Division has no jurisdiction to pass the impugned order i.e. the order impugned is without jurisdiction and liable to be set aside.

It is the further contention of the petitioner that he is not the occupier of plot no. 418 under Mouza-Chakpur, Satampur within police station Belda in the District- Paschim Midnapur, whereas he is possessing a plot no. 208/408 under Mouza-Chakpur, Satampur, under JL no. 713.

It is the contention of the petitioner that by the impugned order the petitioner cannot be removed. He further submits that being the occupier of the land the petitioner has every right to challenge the jurisdiction or the authority of the officer concerned, who were not engaged to deal with the matter.

Learned counsel appearing on behalf of the State authority raised strong objection and submits that the petitioner being a unauthorized occupant has no authority to challenge the jurisdiction of the officer, who initiated the proceeding in terms of the order of a Co-ordinate Bench of this court passed in WPA 5374 of 2022.

It is the further contention of the respondent authority that the officers concerned are duly authorized by notification of the Government to deal

with this matter under West Bengal Highways Act, 1964.

It is the further contention of the State authority that the impugned order is appealable order, thus the petitioner should have approached the concerned authority according to Section 10(4) of the said Act but he straight way appear before this court only to frustrate the order passed by the learned SDO.

It is further contention of the State authority that the SDO had committed no error in passing the impugned order so that the instant writ petition has got no merit.

Having heard the learned counsel for the parties, it appears that the issue of jurisdiction of authorities who passed the impugned order and initiated the proceeding was before this court during the pendency of the instant matter. This court has issued direction upon the authority to submit the report regarding authority of the officers. The respondent authority has placed the report along with the concerned notifications. The said notifications were subsequently challenged by the petitioner by filing exception.

In deciding the entire matter on merit it appears that the jurisdiction of the officers passed the impugned order was never challenged in the writ petition itself. There are no pleadings or no prayers before this court

to issue mandamus to issue writ, so that, the jurisdiction of the authority can be challenged.

However, during the course of hearing of this matter several documents regarding notification of the Government was placed by the respondent which are on the record and are satisfactory.

The writ petition is filed by the petitioner challenging the impugned order issued by the concerned Sub-Divisional officer on 2nd December, 2022. It appears that the petitioner has primarily challenged the impugned order with a ground that the impugned order was passed by violation of natural justice.

It has been argued specifically that before passing the order the concerned SDO has enquire the spot thorough the concerned Block Land & Land Reforms Officer, who submitted an enquiry report but such report was not served upon the petitioner. Thereby petitioner's right for hearing was infringed. Petitioner has annexed information of concerned land maintained by the Land & Land Reforms refuge relief department, wherefrom it appears that plot no. 208/418 having classification "Nayanjuli" is a Government land.

The State authority has placed two reports to justify their action. Reports affirmed by the State authority on 6th January, 2023 contained a report of Block Land & Land Reforms Officer, Narayangar to Sub

Divisional officer Kharagpur, Paschim Midnapore dated 30th November, 2022.

A report of the State authority affirmed on 6th January, 2023 contained a report of Assistant Engineer, PWD, Kharagpur Division.

I have perused the report.

All reports contained the proof possession of petitioner over plot no. 408. The report of Block Land & Land Reforms Officer contained plot no. 418 as well as plot no. 208/418 measuring about 5 decimal are the same plots. It is true that the petitioner was heard by the concerned SDO before passing the impugned order.

The report contained merely possession of the petitioner which in their version is unauthorized occupation over the plot no. 418 as well as plot no. 208/418. Non service of the report of the concerned Block Land & Land Reforms Officer upon the petitioner appears to be not so vital for the petitioner for that his right of hearing has been severely affected or he has been prejudiced.

Moreover, during submission of his reply before the SDO concerned the petitioner never stated or pleaded that he was possession over plot no. 208/418 not in plot no. 418. Moreover during the course of hearing he never asked for any report from the SDO concerned filed by Block Land & Land Reforms Officer. Thus, the principle of violation of natural justice which

has its stretch up to the sky can only be conceded if it affects the right of the petitioner or if it appears to be so fatal that can prohibit the petitioner to raise the defense properly.

In the present case in my view non service of the report of the Block Land & Land Reforms Officer regarding the possession of the petitioner over the disputed land has not affect the petitioner's right to demonstrate his case before the concerned SDO.

Moreover, though the point of jurisdiction of the authority concerned was never pleaded by the petitioner but during course of hearing before this court the respondent authority submitted necessary G.O. wherefrom it appears authority of the concerned SDO has already been notified by the Government vide its notification dated 5th April, 2022 as well the notification for declaring the authority of the public work departments concerned under the West Bengal Highways Act, 1964 has been properly placed.

The petitioner has raised some objection regarding the jurisdiction of Medinipur Division to conduct the hearing. It is the submission of the petitioner that the Kharagpur Division is now the authority after bifurcation of Jhargram District from Medinipur District. The point raised by the petitioner before this court is not a part of the issue involved in

this matter. Thus I refrain myself to comment on this point.

Consideration of the entire issue involved herein, the petitioner has challenged the impugned order passed by the concerned SDO, it appears that the notice under Section 10(1) has properly served upon the petitioner. Thereafter, the concerned SDO has issued notice under Section 10(2)/10(3) of the West Bengal Highways Act, 1964.

A scope of hearing was given to the petitioner, after hearing the concerned SDO opined that the petitioner is under unauthorized occupation over the Government land so the concerned SDO directed the concerned authority to remove the unauthorized structure.

I find nothing illegality or arbitrariness on the part of the concerned Sub Divisional Officer to pass such order.

Accordingly I find no justification to entertain the petitioner.

Under the above observation, the instant writ petition is appear to me not meritorious. Thus the same is dismissed and disposed of.

It appears that the order impugned is an appealable order under sub Section 4 of Section 10 of the West Bengal Highways Act, 1964. It has been stipulated in the said sub Section that the aggrieved

person may approach the concerned District Magistrate against the impugned order passed by the concerned SDO within 15 days from the date of passing of this order.

In the present case, impugned order passed on 2nd December, 2022 and the writ petitioner approach this court on 13th December, 2022. So it appears that the petitioner has approached this court, though under misconception, within the statutory period of appeal. As this court holds that the order is not entertainable in the writ jurisdiction, so I think it necessary that the petitioner should be given a scope to challenge the impugned order before the concerned appellate authority.

The petitioner is directed to file a specific appeal, if he so wish, within a period of 3 weeks from date of passing of this order. On filing such appeal the point of limitation for filing the appeal should be condoned under Section 14 of the Limitation Act.

I make it clear that though this court has observed the merit of this matter but the concerned authority shall dispose of the appeal after hearing all concerned according to the law without being influenced by any observation of this court.

The appellate authority shall dispose of the appeal within four weeks of filing the same.

It appears that the petitioner is maintaining the possession over the disputed plot of land, as this court has directed the petitioner to approach appellate authority. Interim order passed by this court shall be continued till the filing of the appeal.

Subsequent interim prayer, if any, shall be considered by the appellate authority on its merit.

The writ petition and the connected applications if pending are disposed of.

[Subhendu Samanta, J]