

HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:
THE HON'BLE JUSTICE JAY SENGUPTA

WPA 28837 of 2023

Md. Shah Hossain
Vs.
The State of West Bengal & Ors.

For the petitioner	:	Mr. Tapas Kumar Majumder, Mr. Partha Pratim Bhattacharjee.
For the State	:	Mr. Soumitra Bandopadhyay, Mr. Priyabrata Batabyal.
For the respondent no.5	:	Mr. Debasish Das
Heard on	:	03.01.2025
Judgment on	:	03.01.2025

JAY SENGUPTA, J:

Copy of instruction provided by the District Magistrate & Collector, Birbhum, as filed in Court, is taken on record.

Learned counsel appearing on behalf of the petitioner submits that the impugned order of demolition passed by a Sub-Divisional Magistrate was patently erroneous as he did not have the power to pass such an order under Section 4(1) of the *West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962* unless he had been specifically authorised to that extent.

This is strongly opposed by the learned counsels for the State and the private respondents.

Learned counsels for the other side further submit that the Executive Magistrate-in-Charge of the Sub-Division performs the duty as Sub-Divisional Magistrate of the concerned Sub-Division as per sub-section (4) of Section 14 of the Bharatiya Nagarik Suraksha Sanhita, 2023. In any event, the petitioner has a right to appeal under the Act of 1962.

Learned counsel appearing on behalf of the private respondents further submits that after this, an order has been passed in terms of Section 5 of the Act of 1962.

I have heard the learned counsels for the parties and perused the writ petition and the affidavits.

Sub-section 4 of Section 14 of the Act of 1962, the definition of Collector as contained in Section 2 of Sub-section 1 may be quoted as under:-

“2.In this Act, unless there is anything repugnant in the subject of context,-

(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 Man Additional District Magistrate, Subdivisional Magistrate, and any “[Executive Magistrate], specially appointed by the State Government to perform all or any of the functions of a Collector under this Act;

Explanation,-In this clause “Calcutta” has the same meaning as the Calcutta Municipal Act, 1951.”

From this, it is abundantly clear that the term “specially appointed” by the State Government applies to and therefore, qualifies the Executive Magistrate only.

In any event, as per the instructions filed on behalf of the District Magistrate, an Executive Magistrate-in-Charge of the Sub-Division performs the duty of Sub-Divisional Magistrate of the concerned Sub-Division.

Therefore, I do not find any jurisdictional error in passing the impugned order. Therefore, there is no reason to interfere with the same.

However, since the petitioner has a right to prefer an appeal against the said order, he shall be at liberty to file an appeal, if otherwise permitted in law.

With these observations, the writ petition is disposed of.

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)