

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Ct.551 **19.02.26**
D/L.
Item No.901
(Samar)

WPA 1208 of 2026

Subrata Malakar
Vs
The State of West Bengal & Ors.

Mr. Nikhil Kumar Gupta,
Ms. Labonbi Bor,
Ms. Doyel Mondal,

....for the Petitioner.

Ms. Jhuma Chakraborty,
Ms. Rupsa Chakraborty,

.... for the Private State.

1. Affidavit of service filed today is taken on record.
2. This writ petition assails an order dated December 12, 2025 passed by the District Magistrate and Collector, Murshidabad in an appeal dated September 11, 2025 passed by the Sub-Divisional Magistrate, Berhampore Sadar in a proceeding initiated under the provision of the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962.
3. On a combined reading of the provisions of Section 7 and Section 2(1)(b) of the said Act of 1962. It would be evident that in cases where an order is passed by the Sub-Divisional Magistrate, the Commissioner of the relevant division would be the appellate authority. Since in this case, the order impugned has been passed by the District Magistrate who did not

have jurisdiction to entertain an appeal under Section 7 against an order passed by the Sub-Divisional Magistrate, the order impugned is without jurisdiction and the same is set aside.

4. It is also noticed that the interpretation of the provisions of Section 2(1)(b) and Section 7 of the said Act of 1962 did not fall for consideration of this Court on the earlier occasion when the District Magistrate had been directed to consider and dispose of the petitioner's appeal. However, such aspect has been dealt with by this Court in WPA 17250 of 2025 (Beans and Roots and Food and Beverage & Ors. vs. State of West Bengal & Ors.) only on January 16, 2026.
5. Since it is evident that filing of appeal before the District Magistrate is a *bona fide* mistake of law, therefore for ends of justice the petitioner is given an opportunity to file appeal before the relevant Commissioner of the concerned division within a fortnight from date. If such, appeal is filed, the Commissioner shall consider and dispose the same upon affording an opportunity of hearing to all interested parties, as expeditiously as possible preferably within a period of four weeks from the date of filing of the appeal.
6. It is clarified that this court has not gone into the merits of the petitioners' case in this writ petition

and all points are left open to be decided by the said Commissioner of the relevant Division.

7. The petitioner shall be entitled to pray for stay of the operation of the order of the Sub-Divisional Magistrate before the Commissioner. If the petitioner approaches the commissioner with an application for interim order, the commissioner shall entertain such application without delay. In view of the peculiar facts of this case it is expected that for a week from date, the respondent State authorities shall not take any coercive steps in the matter.

8. WPA 1208 of 2026 stands disposed of with the above observations. No costs.

9. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities

(Om Narayan Rai , J.)