

Sl. 6
11.06.2026
Court No.19
BP

WPA 12380 of 2026

Mani Mallik & Ors.
-versus-
The State of West Bengal & Ors.

Mr. Kausik Dey
Mr. Dip Jyoti Chakraborty
Mr. Chitrak Biswas
..for the petitioners

Mr. Nilanjan Bhattacharjee, Sr. Standing Counsel
Mr. Arghya Chatterjee
..for the State

Mr. Rwitendra Banerjee
..for the respondent no.8

The petitioners have prayed for issuance of a writ of mandamus directing the respondent authorities to forbear from giving effect to the order dated September 30, 2024 passed by the Sub-Divisional Magistrate, Kharagpur and the notice dated 27th May, 2026 issued by the Sub-Divisional Officer, Kharagpur, Paschim Medinipore. The petitioners have also sought for a direction upon the appellate authority to dispose of the appeal and the stay application expeditiously.

Mr. Dey, learned advocate appearing for the petitioners submits that the Sub-Divisional Officer lacks jurisdiction to exercise powers of a Collector under Section 3 and 4 of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962. He submits that the order does not reflect that such officer was specially

appointed by the State Government to perform all the functions of a Collector under the Act. He submits that since legal issues have been raised in the appeal filed by the petitioners against the order dated 30th September, 2024 passed by the Sub-Divisional Magistrate, Kharagpur, this Court should pass an order of stay of the notice dated 27th May, 2026.

Mr. Banerjee, learned advocate appearing for the private respondent submits that the petitioners do not have any right to remain in occupation of the property in question. He submits that alleging inaction on the part of the authorities in not removing the encroachment made by the petitioners on the property in question, the private respondent approached a Coordinate Bench by filing a writ petition being WPA 8252 of 2020 which was disposed of by an order dated December 22, 2021 directing the authorities to take steps under the 1962 Act. He submits that pursuant to the direction passed by the Coordinate Bench in the aforesaid writ petition, the Sub-Divisional Magistrate, Kharagpur passed the order of eviction on 30th September, 2024 and since the said authority did not take any further steps to execute the said order the private respondents had to again approach this Court with a writ petition being WPA 28532 of 2025 which stood disposed of by an order dated 19th February, 2026 directing the authorities to implement the order passed in the earlier writ petition. Mr. Banerjee submits that in view

thereof no interference is called for by this Court in this writ petition.

Mr. Bhattacharjee, learned Senior Standing Counsel submits that a proceeding in accordance with the provisions of the 1962 Act was initiated which culminated with the passing of the order dated 30th September, 2024 by the Sub-Divisional Magistrate, Kharagpur and the notice dated 27th May, 2026 was issued fixing the date of eviction of the petitioners from the property in question.

After some argument Mr. De, learned advocate appearing for the petitioners submits, on instructions, that in the event the challenge thrown by the petitioners to the order dated 30th September, 2024 passed by the Sub-Divisional Magistrate, Kharagpur is allowed to be canvassed in the said writ petition, the petitioners shall withdraw the appeal filed before the District Magistrate, Paschim Midnapore under Section 7 of the 1962 Act.

Since the petitioners have challenged the authority of the Sub-Divisional Magistrate to exercise the power of a Collector under the said Act, this Court is inclined to entertain this writ petition insofar as the challenge to the order dated 30th September, 2024 is concerned.

Heard Mr. Banerjee, learned advocate for the private respondent and Mr. Bhattacharjee, learned senior standing counsel on the issue regarding the jurisdiction of the Sub-Divisional Magistrate to exercise the power of a Collector under the 1962 Act.

Section 3 of the 1962 Act provides for issuance of a notice by the Collector calling upon all persons concerned to show cause before such authority as to why an order under sub-section (1) of Section 4 should not be made and shall cause it to be served in the matter referred to in sub-section (2) of Section 3.

Section 4 (1) of the 1962 Act states that if after considering the cause, if any, shown by any person in pursuance of a notice issued under section 3 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the Collector is satisfied that the public land is in unauthorised occupation, he shall make an order of eviction directing all persons in such unauthorised occupation to vacate the public land and deliver thereof to the owner within such time as may be specified in the said order.

Section 5 of the 1962 Act empowers the Collector to enforce delivery of possession by evicting unauthorised occupants.

After going through the order dated 30th September, 2024 this Court finds that the Sub-Divisional Magistrate instead of directing the person with unauthorised occupation to vacate the public land and deliver possession thereof to the owner passed an order directing the Block Land and Land Reforms Officer to recover possession by way of removal of impugned encroachment.

Thus, the Sub-Divisional Magistrate has sought to execute an order of eviction which does not appear to have been passed by such authority in the order dated 30th September, 2024. This Court is, therefore, of the considered view that the mandate of Section 4 (1) of the 1962 Act has not been followed in the case on hand for which this Court is inclined to interfere with the said order.

At this stage Mr. Dey, learned advocate appearing for the petitioners submits that for reasons beyond the control of the petitioners no reply to the show cause notice was submitted by the petitioners. He prays for an opportunity to submit a reply to the show cause notice. Such prayer is seriously opposed by Mr. Banerjee, learned advocate appearing for the private respondent and Mr. Bhattacharjee, learned senior standing counsel.

Since this Court has already expressed its view to interfere with the order impugned this Court feels that a last opportunity should be granted to the petitioners to submit a reply to the show cause notice raising all points therein.

The petitioners will be at liberty to submit a reply to the show cause notice on or before 4 p.m. on 15th June, 2026 upon serving an advance copy to the learned advocate on record of the private respondent appearing before this Court in this writ petition.

On a query of the Court as to when a date of hearing can be fixed by the Sub-Divisional Magistrate, Kharagpur, Mr. Bhattacharjee, learned senior standing counsel, on instructions submits that the hearing can be conducted on 19th June, 2026 at any time that may be specified by this Court. Since the date and time is fixed at the suggestion of the authority and in the presence of the learned advocate for the respective parties there would not be any necessity to serve any further notice of hearing to the respective parties.

For all the reasons as aforesaid, the order dated 30th September, 2024 and all consequential notices and orders issued thereafter are set aside and quashed. The petitioner will be at liberty to submit the reply to the show cause notice on or before 4 p.m. on 15th June, 2026.

The Sub-Divisional Magistrate, Kharagpur is directed to conduct a fresh hearing on 19th June, 2026 at or about 2 p.m. and shall make an endeavour to conclude the hearing on that date itself. If for some unforeseen reason the hearing cannot be concluded on that date, a short date of hearing shall be fixed by such authority which shall not be later than five working days from the aforesaid date fixed. The reasoned order shall be communicated to the parties immediately thereafter.

It is, however, made clear that the issue of jurisdiction of the Sub-Divisional Magistrate, Kharagpur to exercise powers under the 1962 Act is kept open and it

will be open to the said authority to deal with such issue if at all raised by the petitioner in course of hearing.

With the above observations and directions, WPA 12380 of 2026 stands disposed of.

There shall be however no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)