

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Ct.551 **16.02.26**
M/L.
Item No.13
(Samar)

WPA 17250 of 2025

**Beans and Roots and Food and Beverage & Ors.
Vs.
State of West Bengal & Ors.**

Mr. D. Agarwal,
...for the Petitioner.

Mr. Amitesh Banerjee, Ld. Sr. Adv.,
Ms. Trisha Mukherjee,
Mr. Chetan Kabra,
... for the Respondent no. 6.

Mr. Pantu Deb Roy,
Mr. Subrata Guha Biswas,
....for the Respondent nos. 1 to 5.

Mr. Rajib Mullick,
Mr. Biswaroop Ghosh,
... for the Proforma Respondent.

1. This writ petition has been filed assailing an order dated June 28, 2025 passed by the District Magistrate & Collector, North 24- Parganas, Barasat in Mis. Appeal No. 1 of 2025.
2. The said appeal was purportedly filed under the provisions of Section 7 of the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962 (hereafter the said Act of 1962). The order that was impugned before the District Magistrate in the said appeal under Section 7 of the said Act of 1962 had been passed by the Sub-Divisional Magistrate, Bidhannagar, North 24- Parganas.
3. In the course of hearing of the writ petition, a question cropped up as regards the maintainability

of an appeal under Section 7 of the said Act of 1962 before the District Magistrate against an order passed by the Sub-Divisional Magistrate could be maintained?

4. The parties were heard on this issue and the conclusion that has been reached is that such an appeal is not maintainable. The reasons flow from the relevant provisions of the said Act of 1962 themselves.

5. The appellate provision being Section 7 of the said Act of 1962, reads as follows:

“7. Appeal. - An appeal from an order made under this Act shall lie to –

(a) the Commissioner of the Division, where the order is made by the Collector, and

(b) the Collector, where the order is made by any officer specially appointed under sub-clause (b) of clause (1) of section 2, if preferred with thirty days from the date of the order appealed against and the decision of the Commissioner or the Collector, as the case may be, on such appeal shall be final.

Explanation. - In this section 'Collector' does not include an officer specially appointed under sub-clause (b) of clause (1) of section 2.”

6. Thus there are two appellate authorities under Section 7 of the said Act of 1962. To wit, an appeal against an order passed by *an officer specially appointed under sub-clause (b) of clause (1) of Section 2* of the said Act of 1962 shall lie before a Collector and an appeal against the order of a Collector shall lie before the Commissioner of a Division.

7. At this juncture, the definition of the expression Collector may be noticed. The same has been defined in Section 2(1) of the said Act of 1962 in the following manner:

“(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 an Additional District Magistrate, a Sub-divisional 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 in the Calcutta Municipal Act, 1951;”

8. A meaningful reading of the provisions of Section 2(1)(b) of the said Act of 1962 would reveal that there are two categories of officers who are qualified to be a Collector in terms of the provisions of the said Section. There is one category of officers which comprises the Chief Officer-in-Charge of the Revenue Administration of the District and the same also includes an Additional District Magistrate and a Sub-Divisional Magistrate. The other class of officers encompasses Executive Magistrates specially appointed by the State Government to perform all or any of the functions of a Collector under the said Act of 1962.
9. Pertinently, the officers specially appointed by the State Government to perform all or any of the functions of a Collector under the said Act of 1962

are not treated as Collectors for the purposes of Section 7 of the said Act of 1962.

10. Thus, if an appeal is filed against an order passed by an officer who has been specially appointed by the State Government to perform all or any of the functions of a Collector under the said Act of 1962 the same would be heard by any officer who falls within the first category of officers who are qualified to be called Collectors in terms of Section 2(1)(b) of the said Act of 1962 i.e. officers other than *an officer specially appointed under sub-clause (b) of clause (1) of Section 2*. Accordingly, an appeal against an order passed by any officer who is qualified to be called a in terms of Section 2(1)(b) of the said Act of 1962 and who is not an officer Section 2(1)(b) of the said Act of 1962 would lie before the Commissioner of the Division.

11. In the case at hand, the order impugned had been passed by the Sub-Divisional Magistrate who has been specifically indicated in Section 2(1)(b) of the said Act of 1962 to be included in the definition of a Collector cannot therefore be *an officer specially appointed under sub-clause (b) of clause (1) of Section 2*. He is not excluded from the purview of the expression "Collector" used in Section 7 of the said Act of 1962. In such view of the matter, an appeal against an order passed by such officer could not

have been filed before or entertained by the District Magistrate in terms of the provisions of Section 7(1) of the said Act of 1962.

12. Mr. Banerjee, learned senior advocate appearing for the respondent no. 6 has, in his usual fairness, acceded to the aforesaid interpretation of the provisions and has handed up to court a notification dated December 19, 2016 issued by the Government of West Bengal, Personnel and Administrative Reforms Cell and submitted that the Commissioner, presidency Division of Kolkata exercises jurisdiction over North 24- Parganas where the property which forms the subject matter of the lis is situated.

13. Since the appeal that had been filed by the petitioners' before the District Magistrate, impugning the order dated May 15, 2025 passed by the Sub-Divisional Magistrate, Bidhannagar was incompetent in view of the reasons assigned hereinabove, therefore, a natural consequence thereof would be annulment of the order impugned in this writ petition. Accordingly, the order impugned dated June 28, 2025 passed by the District Magistrate and Collector, North 24- Parganas, Barasat in Mis. Appeal No. 1 of 2025 is set aside as the same had been passed by an authority lacking jurisdiction.

14. Since the petitioner and in fact all the parties have acted under the a *bonafide* mistake of law and have

pursued the appellate remedy before a wrong forum, therefore, in the interest of justice, the petitioner should be afforded an opportunity to avail of the statutory appellate remedy under Section 7 of the said Act of 1962 before the Commissioner, Presidency Division, Kolkata within a period of fifteen days from the date.

15. Since the order impugned has been set aside, all the consequential steps taken in terms of the order impugned dated June 28, 2025 would also stand set aside.

16. Mr. Banerjee, learned senior advocate appearing for the respondent no. 6 has submitted that the Sports Department of the Government West Bengal is owner of the subject land and as such the State Department is a necessary party to the proceeding under the said Act of 1962. Mr. Banerjee's client shall be at liberty to make appropriate request for addition party before the appellate authority, before whom the appeal is required to be preferred within the time specified herein and the petitioner shall be entitled to take objection to the same in accordance with law which shall be decided by the appellate authority in accordance with law.

17. 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 urged by the

petitioner before the appellate authority and to be decided by the appellate authority in accordance with law.

18. WPA 17250 of 2025 stands disposed of with the above observations. No costs.

19. 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.)