

31.07.2024
Court No.09
Item no.07
CP

WPA No. 2577 of 2024

Najrul Islam & anr.
Vs.
The State of West Bengal & ors.

Mr. Golam Mastafa
Mr. Tarasankar Samanta
....for the petitioners.

Mr. Indranil Roy
Mr. Tapas Kr. Mandal
.....for the State.

1. Heard learned counsel for the respective parties.
2. The petitioners challenge the order of removal of encroachment. The Allahabad Bank alleged that the petitioners encroached upon a PWD land, right in front of the land which was taken over by the Allahabad Bank in a SARFAESI proceeding. The Bank has not been served with a copy of the writ petition.
3. Two fact finding authorities have found the petitioners to be encroachers of PWD land.
4. The Manager, Allahabad Bank had approached the Sub-Divisional Magistrate, Domkal, Murshidabad, alleging that the petitioners had encroached upon the PWD land right in front of the premises of Smt. Iralata Mondal which had been mortgaged to the bank and had been

taken over by the bank as per the order of the court. The Branch Manager filed a case under Section 133 of the Cr.P.C. vide Case No.35/2020. The Sub-Divisional Executive Magistrate, Domkal, Murshidabad passed an order with a direction upon the Assistant Engineer, PWD, Berhampore SD-III, to demolish the unauthorized construction on the said land by removing the encroachers. The Assistant Engineer, PWD, Berhampore SD-III, initiated proceedings under Section 10(3) of the West Bengal Highways Act, 1964. An order of demolition was passed, but the demolition had not been carried out. The Assistant Engineer, PWD, Berhampore SD-III requested that an Executive Magistrate be present during the process of removal. The process of removal was extended upto March 3, 2022. Challenging the said order passed under Section 133 of the Cr.P.C., the petitioners preferred a writ petition. The writ petition was dismissed for default and the petitioners did not take any steps to pursue the same.

5. In compliance of the order of the Sub-Divisional Executive Magistrate, the Assistant Engineer, PWD, Berhampore SD-III, heard the parties once again. The bank approached the

learned SDEM court for execution of the order of removal. The matter was heard. The petitioners, the Assistant Engineer, PWD and the complainant were heard. The representative of the Block Land & Land Reforms Officer, Jalangi filed a report. The report was considered along with sketch maps and photographs of the spot inspection.

6. Upon hearing all the parties, the petitioners were found to have illegally approached the PWD road right in front of RS. Plot No.2755 corresponding to the L.R. Plot No. 3052 of Mouza - Muradpur, J.L. No.30, Khatian No. 7624 within Jalangi Police Station. It was recorded in the order of the Sub-Divisional Executive Magistrate that the encroachers had admitted that they had illegally encroached upon the PWD land.

7. Aggrieved, the petitioners preferred an appeal. The District Magistrate, Murshidabad disposed of the appeal by upholding the order of the Sub-Divisional Executive Magistrate. It was held that the report of the Block Land & Land Reforms Officer, the enquiry report of the Amin and the information with regard to the plots in question, clearly reflected the factum of encroachment over PWD land. The authority

also found that adequate opportunity of hearing had been given to the petitioners. The computerized record of rights pertaining to R.S. Plot No.2755, corresponding to L.R. Plot No. 3052 and L.R. Khatian No. 7624, comprising an area of 3 decimals, was classified as 'Bari' and was recorded in favour of Masud Molla. In front of the L.R. Plot No. 3052, there was a plot of land which belonged to the PWD being L.R. Plot No. 3094 corresponding to R.S. Plot No.2768/3359. The land was classified as 'Nayanjuli' and the total area of the plot measured around 3.13 acres. The plot was recorded in favour of the PWD, in L.R. Khatian No.1483/1.

8. Under such circumstances, the petitioners failed to prove before the authority that the petitioners were the owners of the lands which were alleged to have been encroached upon.
9. The petitioners claim to be owners in respect of 6 decimals in R.S. Plot No.2755. The record of rights reveal that Masud Molla was the recorded owner in respect of the R.S. Plot NO. 2755 corresponding to L.R. Plot No.3052. The order of encroachment was passed in respect of L.R. Plot No.3094 corresponding to R.S. Plot No.2768/3359 which was recorded as

'Nayanjuli'. Thus, the ownership of the petitioners in respect of Plot No.2755 is not relevant in the instant case. In any event, neither the Sub-Divisional Executive Magistrate nor the District Magistrate were required to adjudicate the title of the petitioners. The order has been passed in respect of a PWD land and there is a recording of the admission of the encroachers, that they had encroached upon PWD land.

10. It also appears that the report of the Block Land & Land Reforms Officer, the Amin and the photographs taken on spot inspection, were produced before the authorities. When both the fact finding authorities found encroachment, upon appreciation of the records, there is no scope for interference with the orders impugned.

11. The question arises whether judicial review is permissible in this case. The petitioners have not been able to show any right of possession in respect of the PWD land. Moreover, there are admissions of encroachment. The petitioners have not been able to demonstrate that the decision making process was either flawed or contrary to the statute.

12. The writ petition is accordingly dismissed.

13. If the petitioners raise any title dispute, the remedy of the petitioners would be before the appropriate civil court.
14. There shall be no order as to costs.
15. All parties are to act on the basis of server copy of this order.

(Shampa Sarkar, J.)