

23.08.2024

Item No. 09

Ct. no.2

b.r.

WPA 21407 of 2024

Suklal Singh & Anr.

-Vs.

The State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharya, Sr. Adv.

Mr. Purbayan Chakraborty

Mr. Deeptangshu Kar

... For the Petitioners

Mr. Santanu Kumar Mitra, Ld. Sr. Govt. Adv.

Mr. Amartya Pal

.... For the State.

Affidavit-of-service filed in Court today, is taken on record.

Mr. Bikash Ranjan Bhattacharyya, learned Senior counsel, appears for the petitioners.

Mr. Santanu Kumar Mitra, learned Senior Government advocate appears for the respondent nos. 1 to 4.

The writ petitioners in this writ petition are two individuals who have challenged the impugned order dated **August 14, 2024** passed by the **respondent no. 2** in exercise of its power under **Section 10 of the West Bengal Highways Act, 1964.**

The issue previously also travelled before a Co-ordinate Bench by other petitioners therein in **WPA No. 13875 of 2023**. A Co-ordinate Bench by its order dated **September 12, 2023, annexure P-2 at page 23** to the writ petition disposed of the said writ petition with a

direction upon the respondent no. 2 to consider the case of those petitioners in the manner and mode as directed therein.

Pursuant to the said direction, the respondent no. 2 considered the issue and passed the impugned order. Under the impugned order, these two petitioners along with others were found to be alleged encroachers of public land and possession was directed to be recovered from them.

Challenging the said impugned order dated **August 14, 2024**, these two petitioners and other eight individuals preferred their separate appeals before the statutory Appellate Authority under **Section 10(4) of the said 1964 Act**. The appeals are pending.

Mr. Bhattacharyya, learned Senior counsel submits that, this writ petition should be entertained in a representative capacity along with the cause of those other appellants in terms of **prayer-(b)** in the writ petition, as the common cause has been espoused. Mr. Bhattacharyya, further submits that, during pendency of the said appeal, if the petitioners are dispossessed from their respective occupation of lands, the statutory appeal which is the right of the petitioners shall become negated. Hence, this writ petition, praying for an interim protection till the statutory appeals are disposed of.

Mr. Bhattacharyya, learned Senior counsel further submits it is the constitutional mandate which makes the State obligatory to provide shelter to its every citizen. Since the State has failed to provide such shelter, the petitioners along with the other appellants who have filed the statutory appeals cannot be deprived of their shelter, more so when the land upon which they are situated are not required for public purpose.

Learned State counsel, Mr. Santanu Kumar Mitra, submits, the petitioners along with other eight appellants in the statutory appeals are found to be encroachers on record and according to the report prepared and submitted by the jurisdictional Block Land & Land Reforms Officer (B.L. & L.R.O.). The encroachers shall not be granted any protection. He further admits that the appeals have been filed and are pending before the statutory appellate authority.

Learned State counsel further submits that, the subject land which has been encroached by the petitioners are very much required for public purpose. The land is a PWD land and rank encroachers cannot seek any protection in support of their encroachment of public land.

After considering the rival contentions of the parties and upon perusal of the materials on record, at the outset, it appears to this Court that, the previous writ petition was also filed by few individual writ

petitioners, in which the Co-ordinate Bench passed its order dated **September 12, 2023**. The said writ petition has also not acquired representative capacity. In the instant writ petition also two individual writ petitioners are there, who have filed their respective statutory appeals. The cause espoused in this writ petition is not a cause to be treated as a public interest litigation. It is an individual cause. When an order of the State authority claimed to have affected the rights of these two petitioners' individual rights, they have their own remedy in law, for which, no collective action can be brought neither is maintainable. All the individual appellants, admittedly, have filed their respective individual appeals. The cause in every appeal is independent of each other. Hence, this Court is of the firm and considered view that, this writ petition cannot and should not acquire a representative capacity in terms of **prayer (b)** to the writ petition

It is equally true that, when the statutory appeals have already been filed by these two individual writ petitioners, these two writ petitioners have a right to be heard in their appeals and to receive a decision in accordance with law therein.

Learned Senior Counsel, Mr. Bhattacharyya, on instruction from his clients submits that, the prayer for interim relief has already been made before the statutory appellate authority in the pending appeals.

In view of the above, the jurisdictional statutory appellate authority is directed to here out the interim reliefs prayed for by these two writ petitioners before it and shall decide the interim relief prayer with its reasonable conclusion after affording an opportunity of hearing to these **two writ petitioners** and by passing a reasoned order.

The entire exercise as directed herein shall be carried out and completed by the jurisdictional appellate authority in so far as interim relief is concerned on or before **September 6, 2024**. The order shall be served upon these two writ petitioners on or before **September 11, 2024**.

There shall be no further steps or coercive steps to be taken by the respondent authorities against **these two writ petitioners** till **September 18, 2024**.

It is made clear that this order shall not create any right or equity in favour of these two writ petitioners, if these petitioners do not succeed to their claims for interim relief before the jurisdictional appellate authority strictly in accordance with law.

It is made clear that this Court has not gone into the merits of the claim of these petitioners and these two petitioners shall be at liberty to urge whatever points they wish to urge in support of their contention before the jurisdictional appellate authority by relying

upon whatever records and documents they wish to rely upon.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions, this writ petition, **WPA 21407 of 2024** stands **disposed of**, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)