

20.04.2023
sayandeep
Sl. No. 04
Ct. No. 05

WPA 9482 of 2023

Arabinda Das & Ors.
-Versus-
State of West Bengal & Ors.

Mr. Sudhasatva Banerjee
Mr. Manish Biswas
Mr. Akash dutta
Mr. Mrinal Kanti Biswas

..... for the petitioners

Mr. Nilotpai Chatterjee
Mr. Prantick Gorai

.....for the State

The Court had passed an order yesterday, i.e., 19.04.2023 refusing to grant any interim relief. The order was made on the ground that learned counsel appearing for the petitioners had moved the matter on facts which found to be non-existent. The matter was kept today on the request of learned counsel appearing for the State on the limited point of a confusion regarding the date of the impugned order.

The facts which were brought to the Court's notice today are entirely different and disturbing to say the least.

Admittedly, the petitioners' structure was demolished by the respondent No. 4 namely the BDO, Murshidabad on the basis of the impugned order dated 29.03.2023, which bears the date as 21.03.2023. Counsel appearing for the State, who always takes a fair

stand, submits that counsel made several attempts to contact the instructing officer of the State respondents but was unable to get any instructions before the matter was taken up at 2 p.m. Counsel further submits that the concerned Deputy Magistrate, Murshidabad, namely, Biswanath Saha, gave a specific assurance that there was no threat of demolition of the petitioners' property. This assurance was given at 1:59 p.m.

It however transpires that the structure was demolished at around 12:30 p.m. yesterday. The exact time of demolition is not before the Court as the concerned officer is yet to give particulars of the impugned action.

On the factual score, the petitioners filed the writ petition on 18.04.2023 and served a notice to the State respondents on 17.04.2023 as well as on 18.04.2023. The petitioners gave notice to the respondents of the matter being mentioned at 2 p.m. yesterday.

The impugned order dated 29.03.2023, records that the Sub-Divisional Magistrate, Jangipur proceeded to the action on the provisions of the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962. Section 2(7) of the Act defines "*public land*" but excludes a Government road or a highway within the meaning of The Bengal Highways Act, 1925 or under any other law for the time being in force on the subject. A document issued by the Land and Land Reforms and

Refugee Relief and Rehabilitation Department describes Plot No. 852 as “*raasta*” (road in Bengali). The impugned order makes it clear that plot No. 852 is the land under dispute. Hence, it is arguable whether the authorities could have proceeded at all under the 1962 Act.

Even if it is assumed that the authorities had the power to initiate proceedings under the said Act, Section 3(1) which operates in respect of public land, authorizes the Collector, as defined under Section 2(1) of the Act, to act on information received by the Collector in relation to unauthorised occupation of any person on public land. The Collector will then issue a notice in the nature of a show-cause and give 15 days to the concerned person to respond to the show-cause. Section 4(1) authorizes the Collector to take action after considering the case made out in the reply to the show-cause and make an order of eviction on being satisfied of the fact of unauthorized occupation. Section 5(1) follows for non-compliance of an order made under Section 4(1) and the Collector is thereby authorized to enforce delivery of possession of the public land. Therefore, Sections 3,4 and 5 are in the nature of information, order and execution, respectively.

The impugned order in the present case reflects that the SDM jumped Sections 3 and 4 of the 1962 Act and proceeded straightaway to direct removal of the

encroachment under Section 5(1) of the Act. Even if it is assumed that the notice dated 21.03.2023 is a notice under Section 3, the documents placed before the Court do not indicate that the procedure to be followed under Sections 4 and 5 were complied with by the concerned authority. The documents do not even mention the word “demolition” anywhere.

Even more significant is a letter written by the BDO, Murshidabad to the Officer-in-Charge, Murshidabad on 18.04.2023 seeking urgent steps for completion of a Government project on the concerned land with copies to the M.P., Jangipur and the M.L.A., Suti. The letter was copied to these political functionaries for sending a representative on the stipulated date and time.

The action of the State authorities in failing to comply with the statutory mandate of the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962, – assuming that the Act is applicable in the present case– and disregarding the filing of the writ petition before this Court amounts to “Malice in Law”. Malice in Law is a reckless act in violation of the legal rights of a citizen which may or may not be actuated by personal ill-will. It involves an intention on the part of the authorities to do a wrongful act with full knowledge not only of the commission of the act but also of the consequences which would necessarily follow as a

result of the act. Malice in Law would also arise where there is a stark absence of a reasonable basis for the act. Malice in Law is also where a law is deliberately subverted to defeat the rights of the opposite party without regard to the injury caused.

In the present case, the State respondents have acted in complete violation of the legal rights of the petitioners who have approached the Court for redress and also in blatant violation of the procedure mandated under the 1962 Act. Calling upon political functionaries to lend support to an act which is *ex facie* illegal aggravates the malice and is evidence of the pre-meditated nature of the act thereof. The State respondents have disregarded a pending judicial proceeding and have sought to frustrate the same. The respondents have sought to out-manoeuvre and overreach the Court and must therefore pay -literally- for their conduct.

The respondents must hence make good, the damage and loss caused to the petitioners. Learned counsel appearing for the petitioners presents an estimate of the loss caused which has been shared with counsel appearing for the State. The estimate is placed before the Court. The State respondents shall accordingly pay Rs. 80,000/- at the first instance to the petitioners within 12 p.m. tomorrow, i.e., 21.04.2023.

The State respondents shall decide which respondent shall bear the costs imposed.

Let the matter be listed as the first item tomorrow. The respondent No. 2 being the SDO, Jangipur, Murshidabad, shall be present in Court tomorrow.

This Court must also express its regret at the observations made against counsel appearing for the petitioners on 19.04.2023. The order dated 19.04.2023 is recalled.

Leave is given to the counsel appearing for the petitioners to affirm the supplementary affidavit during the course of the day.

(Moushumi Bhattacharya, J.)