

28.01.2021
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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**WPA 18215 of 2019
(Via Video Conference)**

**Gautam Adhikari
-Vs-
The State of West Bengal & Ors.**

Mr. Sukanta Chakraborty, Advocate
Mr. Anindya Halder, Advocate

... for the petitioner

Mr. Jahar Lal De, Advocate
Ms. Smita Das Dey, Advocate

... for the State

The subject matter of challenge in this writ petition is the order dated January 16, 2019 passed by the respondent no. 7, the Executive Engineer, National Highway Division-I & Highway Administration (hereinafter referred to as 'the impugned order').

By the impugned order, the respondent no. 7 has held that the petitioner is in unauthorized occupation within Right of Way of National Highway-117 to the extent of area 4.88 decimal (approx.) over Plot Nos. 1304 and 1305 of Mouza- Joydebpur, J. L. No. 87 towards Diamond Harbour (Left Side) and directed for removal of the said encroachment made by the petitioner on the said national highway.

The petitioner, however, claims not to have received the said impugned order dated January 16,

2019 but claims to have acquired the knowledge of the same from a third party.

The principal ground urged by the petitioner to challenge the impugned order dated January 16, 2019 is that the same was passed by the respondent no. 7 without serving him the required notice under sub-Section (2) of Section 26 of the Control of National Highways (Land and Traffic) Act, 2002 (hereinafter referred to as 'the Act of 2002').

In view of the assertion of the petitioner that he did not receive the impugned order, on January 22, 2021, this Court directed the State respondents to produce the records of the case resulting in passing of the impugned order.

Today, when the writ petition is taken up for hearing, Mr. Jahar Lal De, learned advocate representing the State respondents has produced the entire records of the case. From the said records, the impugned order dated January 16, 2019 and a notice dated January 7, 2019 issued under sub-Section (2) of Section 26 of the Act of 2002 issued by the respondent no. 7 are available. Mr. Sukanta Chakraborty, learned advocate appearing for the petitioner was allowed to go through the impugned order dated January 16, 2019 as well as the said notice dated January 7, 2019 issued under sub-Section (2) of Section 26 of the Act of 2002.

After perusing the records, the learned advocate for the petitioner submitted that the notice issued under sub-Section (2) of Section 26 of the Act of 2002,

seems to have appeared to have received by one Nizanur Shah and not the petitioner himself.

Considering the records produced by the State respondents before this Court, I find some substance that the said notice dated January 7, 2019 issued under sub-Section (2) of Section 26 of the Act of 2002, was not received by the petitioner. The petitioner is, however, unable to explain as to how he could construct a shop room on the National Highway-117. The petitioner has not disclosed any permission/sanction either of any local authority or the Diamond Harbour Municipality or any competent authority allowing him to construct a shop room on the highway in question.

Be that as it may, in the absence of any notice under sub-Section (2) of Section 26 of the Act of 2002 being received by the petitioner, the impugned order dated January 16, 2019 is quashed. The respondent no. 7 is directed to issue a fresh notice under sub-Section (2) of Section 26 of the Act of 2002 by way of personal service to the petitioner and to pass a fresh order under sub-Section (3) of Section 26 of the Act of 2002 within four weeks from the date of communication of this order.

If the petitioner for any reason avoids service of notice under sub-Section (2) of Section 26 of the Act of 2002, the respondent no. 7 shall give effect to the impugned order dated January 16, 2019 without making further enquiry.

With the above directions, the writ petition, WPA 18215 of 2019 stands disposed of.

There shall, however, be no order as to costs.

Department is directed to forthwith issue urgent certified website copies of this order subject to compliance of the required formalities by the parties.

(**Ashis Kumar Chakraborty, J.**)