

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA 1924 of 2022

**Bangiyo Bhugol Mancha and another
Vs.
The State of West Bengal and others**

With

WPA 1927 of 2022

**Rajya Vidyalaya Siksha Karmi Sanstha and another
Vs.
The State of West Bengal and others**

With

WPA 1929 of 2022

**Sarbangin Uttaran and another
Vs.
The State of West Bengal and others**

With

WPA 1932 of 2022

**Berhampore Bharat Natyam Nrityan and another
Vs.
The State of West Bengal and others**

With

WPA 1933 of 2022**Berhampore Minority and Community Development Service and
another****Vs.****The State of West Bengal and others****With****WPA 1937 of 2022****Berhampore Rann Natya Sanstha and another****Vs.****The State of West Bengal and others**

For the petitioners in all the matters	:	Mr. Subir Sanyal, Mr. Shibasis Chattrjee, Mr. Sagnik Roy
For the State-respondent in WPA 1924 of 2022	:	Mr. Subhabrata Datta, Mr. Abdus Salam
For the State-respondent in WPA 1927 of 2022	:	Mr. Ayan Banerjee, Ms. Debasree Dhamali
For the State-respondent in WPA 1929 of 2022	:	Mr. Manoj Malhotra, Mr. Suman Dey
For the State-respondent in WPA 1932 of 2022	:	Mrs. Chama Mookherjee, Mrs. Paramita Pal
For the State-respondent in WPA 1933 of 2022	:	Mr. Ashim Kr. Ganguly, Mr. Bellal Sheikh
For the State-respondent in WPA 1937 of 2022	:	Mr. A.K. Guha, Mr. Naren Ghosh Dostidar

Hearing concluded on : 18.02.2022
Judgment on : 25.02.2022

Sabyasachi Bhattacharyya, J:-

1. The subject-matter of the present writ petitions is identical. The respondent-Authority, being the concerned Block Land & Land Reforms Officer (BL&LRO), Sadar, Berhampore, Murshidabad, issued notices captioned under Section 49A of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as “the WBLR Act”) alleging that the writ petitioners have made unauthorised constructions on government land. In the said notices, the respective petitioners were directed to “remove” (indicating, in all probability, “vacate”) the place and restore the original nature of the land within seven (07) days after receipt of the respective notices; the petitioner were threatened with legal action otherwise.
2. Learned counsel appearing for the petitioners submits that the respondent-Authority acted palpably without jurisdiction in violating the procedure laid down in Section 3 of the Public Land (Eviction of Unauthorised Occupants) Act, 1962 (for short, “the 1962 Act”), which lays down the modalities for issuance of notice against unauthorised occupants of public land to show cause against order for eviction.
3. Learned counsel submits that admittedly, the lands-in-question in all the writ petitions are “public lands” and, as such, rigours of the 1962 Act squarely apply.

4. It is further submitted that although the WBLR Act is a “specified Act” as contemplated in the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 (for the sake of brevity, “the 1997 Act”), the present impugned action of the Authority concerned is not encompassed by the jurisdiction of the Land Reforms and Tenancy Tribunal (for short, “the Tribunal”) within the ambit of the 1997 Act.
5. Learned Counsel cites a Division Bench judgment of this Court rendered in *Vhandardaha Beel Matswajibi Samabay Samity Limited and another Vs. State of West Bengal and others*, reported at (2014) 1 CHN (Cal) 544, in support of the proposition that the Tribunal is of limited jurisdiction and acts under a special statute, deriving its powers to so act within the four corners of that statute. In the said case, the Division Bench interfered under Article 226 of the Constitution of India on the premise that the bar stipulated in the 1997 Act was not applicable, since the notice impugned therein was not issued in accordance with the provisions of the specified Act but was an administrative action.
6. Learned counsel appearing for the respondent-Authority submits that, since the WBLR Act is a “specified Act”, the bar of jurisdiction as envisaged in Section 8 of the 1997 Act is squarely applicable to the writ petitions.
7. It is further argued that the notices, self-evidently, were issued under Section 49-A of the WBLR Act, which is a specified Act. As such, a challenge to the said notices would lie only before the Tribunal and not before a Single Judge of the High Court.

8. It is, thus, contended that the writ petitions ought to be dismissed *in limine*.
9. Even otherwise, learned counsel for the respondent-Authority submits, there was no infirmity or illegality in the impugned notices insofar as those were issued within the four corners of Section 49-A of the WBLR Act. As such, there arises no occasion for interference with the said notices by this court at this juncture.
10. In reply, learned counsel for the petitioners argues that Section 49-A envisages a penalty of imprisonment up to one year and/or fine up to Rs.2,000/- and does not contemplate eviction. Hence, no such notice asking the petitioners to show cause could have been issued under Section 49-A of the WBLR Act at all. At best, it is argued that a proceeding could be drawn up against the petitioners, if the Authority so felt, within the contemplation of Section 49 of the WBLR Act. Even then, hearing had to be afforded to the respective writ petitioners under Section 49(2) of the WBLR Act, which has not been done in the present case.
11. Learned counsel for the petitioners refutes the contentions of the respondent-Authorities on the above grounds.
12. In order to consider the scope of the bar of jurisdiction contemplated in the 1997 Act, it must be noted that Section 2(r)(ii) includes the WBLR Act within the purview of “specified Act”.
13. Section 3 of 1997 Act is a *non obstante* clause providing that the 1997 Act shall have overriding effect over any law for the time being in force or any custom or usage or any contract, express or implied.

- 14.** Section 8 of the 1997 Act excludes all courts except the High Court, sitting in Division Bench under Articles 226 and 227 of the Constitution of India, from entertaining any proceeding or provision or application or from exercising any jurisdiction, power or authority in relation to adjudication or trial of disputes or applications relating to land reforms or any matter connected therewith or incidental thereto or any other matter under any provision of a specified Act.
- 15.** However, the jurisdiction, power and authority of the Tribunal has clearly been enumerated in Section 6 of the 1997 Act, which reads as follows:

“Jurisdiction, power and authority of Tribunal.—Subject to the other provisions of this Act, the Tribunal shall, with effect from such date as may be appointed by the State Government by notification in this behalf, exercise jurisdiction, power and authority in relation to—

- (a) any order made by an Authority under a specified Act;*
- (b) an application complaining inaction or culpable negligence of an Authority under a specified Act;*
- (c) an appeal against an order of the Mines Tribunal appointed under Section 36 of the West Bengal Estates Acquisition Act, 1953 (W.B. Act I of 1954);*
- (d) applications relating to matters under any provision of a specified Act or matters relating to nay constitutional validity of nay Act under the provisions of a specified Act;*
- (e) adjudication of matter, proceedings, cases and appeals which stand transferred from the High Court and other Authorities to the Tribunal in accordance with the provisions of this act.”*

- 16.** Following the dictum laid down in *Vhandardaha Beel Matswajibi Samabay Samity Limited* (supra) by the Division Bench of this Court, the notices impugned in the present writ petitions and their scope is to be decided on the anvil of the jurisdiction conferred on the Tribunal.

17. A composite reading of Section 6 and other relevant provisions of the 1997 Act clearly indicates that the Tribunal has the jurisdiction and authority to deal with and adjudicate on actions or matters as stipulated in the 1997 Act itself.
18. All acts committed or omitted under the provisions of any “specified Act” within the contemplation of the 1997 Act are excluded from the jurisdiction of the Writ Court, Civil Court and other courts except the High court in Division Bench and the Supreme Court. It is to be explored in the context of such backdrop whether the impugned notices were actually issued under any of the provisions of the WBLR Act, as alleged by the respondent-Authority.
19. It is well-settled that the content and spirit of a document, and not the mere caption, is to be looked into for the purpose of ascertaining the applicable statute. In the present cases, although all the impugned notices were captioned under Section 49A of the WBLR Act, it is evident *ex facie* that the said notices were not issued under Section 49A.
20. Section 49A of the WBLR Act provides penalty of imprisonment up to one year and/or fine up to Rs. 2,000/-. However, eviction and removal of structures are remedies conspicuous in their absence from Section 49A.
21. For argument’s sake, even if it is assumed that Section 49A(a) contemplates issuance of a notice as well, Clause (a) of Section 49A could not have contemplated anything beyond the ultimate penalty stipulated therein, that is, imprisonment and/or fine. Hence, in any

event, a show-cause notice for intended eviction could not have been contemplated under Section 49A at all.

22. Moreover, the language of Clause (a) of Section 49A of the WBLR Act makes it vividly clear that the action envisaged therein is a *post-notice* modality, since the language of Clause (a) is that any person who, being in unauthorised occupation of any land which is at the disposal of the State Government fails to vacate such land only after a notice has been served on him to do so, shall be punishable with the penalty stipulated in Section 49A. Hence, as per the language of the section itself, issuance of a notice under Section 49A could not precede or be contemporaneous with the imposition of the penalty or the evacuation from the land-in-question.
23. Thus, issuance of a notice under Section 49A for showing cause as to whether the recipient would not vacate the land-in-question and restore the original nature of the land would be an absurdity and a contradiction in terms.
24. In such view of the matter, Section 49A of the WBLR is not attracted at all to the impugned notices, despite the erroneous caption mentioning the said provision.
25. Stepping a bit further, Section 49(2) of the WBLR Act envisages a situation where the settlement in favour of a person may be annulled by an order in writing, along with the transfer in her/his favour, as may be deemed necessary. Section 49(3) of the WBLR Act provides that when an order under sub-Section (2), annulling settlement or both the annulment and the transfer of any land, as the case may be,

is passed, the Revenue Officer shall enforce delivery of possession of such land to the Collector by using such force as may be required after evicting the person in actual occupation of such land. However, even such proceedings for eviction can only be undertaken only after hearing the person with whom the land was settled and/or the transferee of such person who, for the time being, is in actual occupation of the land.

- 26.** Not only such hearing, but an enquiry is also stipulated as a pre-requisite of such eviction. In fact, after such hearing and enquiry, only if the Revenue Officer is satisfied that settlement of such land was made by mistake or obtained under any provision of Section 49 by practice of fraud, misrepresentation, coercion or otherwise, or that a transfer of any land has been made in contravention of sub-Section (1-A) of Section 49, the Revenue Officer can annul the settlement and/or the transfer as may be deemed necessary.
- 27.** Only after the aforesaid procedure is exhausted, steps can be taken for eviction of a person settled with the land and/or in occupation as a transferee of such person.
- 28.** In the present case, however, Section 49 was not resorted to by the respondent-Authority at any point of time, hence ruling out the possibility of the application of the WBLR Act to the present case.
- 29.** In such a scenario, it cannot be said that any power vested or conferred under any of the provisions of the WBLR Act were resorted to at any point of time, which could have conferred jurisdiction on the Tribunal to decide on the issue.

- 30.** Therefore, although the WBLR is a “specified Act” as envisaged in Section 2(r)(ii) of the 1997 Act, the embargo/exclusion of the jurisdiction of courts, as provided in Section 8 of the 1997 Act, is not applicable in the present case at all.
- 31.** The cited Division Bench report also lays down a proposition consistent with the above observation and, as such, operates against the objection regarding maintainability of the writ petitions as taken by the respondent-Authority.
- 32.** Hence, there is no doubt as regards this Court, in exercise of its powers of judicial review under Article 226 of the Constitution of India, having jurisdiction to deal with a challenge to the impugned notices.
- 33.** Section 3 of the 1962 Act, on the other hand, provides as follows:

“3. Issue of notice to show cause against order for eviction of unauthorised occupant from public land.—(1) *If, in respect of any public land, the Collector is of opinion, upon application made by an officer of the owner of the public land authorised in this behalf by such owner or upon information received otherwise, that the public land is in the unauthorised occupation of any person or persons, the Collector shall issue a notice in such form and containing such particulars as may be prescribed calling upon all person concerned to show-cause before such date, not being less than fifteen days after the date of the notice, as may specified in the notice why an order under sub-section (1) of section 4 should not be made, and shall cause it to be served in the manner referred to in sub-section (2). Intimation of the date so specified shall be given to the owner of the public land and to its officer authorised under this sub-section.*

(2) A notice issued under sub-section (1) shall be served by affixing it on a conspicuous part of the public land concerned and in such other manner as may be prescribed.

(3) A notice served in the manner referred to in sub-section (2) shall be deemed to have been duly served.”

34. The detailed procedure and modality of issuance of show-cause notice in respect of proposed eviction of an unauthorised occupant from public land has been prescribed in Section 3 of the 1962 Act.
35. Section 2(7) of the 1962 Act defines “public land” to mean “any land belonging to, or taken or lease by, the State Government, a local authority, a Government company or a corporation owned or controlled by the Central or the State Government and includes any land requisitioned by, or on behalf of, the State Government, but does not include a Government road or a highway within the meaning of the Bengal Highways Act, 1925, or any other law for the time being in force on the subject.”
36. On the other hand, Section 2(8) of the 1962 Act defines “unauthorised occupation”, in relation to any public land to mean the “use or occupation by any person of the public land without authority in writing by or on behalf of the owner thereof and includes the continued use or occupation of any such land on the expiry or termination of such authority.”
37. Hence, if any notice to show cause for eviction, removal of structure or restoration of the lands-in-question was to be issued on the petitioners at all, the specific procedure as contemplated in Section 3 of the 1962 Act had to be adhered to. The said provisions, in the present case, have not been resorted to and/or quoted in the impugned notices at all, thus, rendering the said notices palpably *de hors* the 1962 Act and violative of the law.

38. In view of the petitioners having not been given any opportunity of hearing prior to holding them as unauthorised occupants of public land, the cardinal principle of natural justice, “*audi alteram partem*” has been squarely violated as well.
39. In the above circumstances, the notices impugned in each of the writ petitions were unlawful, *de hors* the law and Natural Justice and cannot withstand legal scrutiny.
40. Hence, WPA No.1924 of 2022, WPA No.1927 of 2022, WPA No.1929 of 2022, WPA No. 1932 of 2022, WPA No.1933 of 2022 and WPA No.1937 of 2022 are allowed, thereby setting aside and quashing the respective notices of show cause impugned in each of the said writ petitions respectively.
41. There will be no order as to costs.
42. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(**Sabyasachi Bhattacharyya, J.**)