

11th May,
2022
(AK)
01

W.P.A 6765 of 2022

Gopal Chandra Mirda and others
Vs.
The State of West Bengal and others

Mr. Tarapada Das
Ms. Soma Chakraborty
...for the petitioners.

Ms. Jayeeta Sinha
Mr. Sandip Mandal
...for the State.

Ms. Manika Roy
...for the respondent no.10.

Learned counsel for the petitioners argues that the impugned notice (Annexure-P5 at page-24 of the writ petition) dated April 6, 2022 was vague, since it appeared to be a composite notice, clubbing “Section 10 of the West Bengal Highway Act, 1964 and Section 1 of the Public Premises (Eviction of Unauthorized Occupants)”.

It is argued that there is no provision under Section 1 of either the 1971 Act or the 1962 Act, dealing respectively with Public Premises and Public Land, for eviction.

It is further argued that the notice is also bad in law insofar as it directs the petitioners to demolish their structure on the allegation that the petitioners are unauthorized occupants, without giving any prior opportunity of hearing to the petitioners.

Learned counsel appearing for the respondent authorities files a report along with certain annexures

and indicates that the authorities stick to Section 10(1) of the West Bengal Highways Act, 1964 for the purpose of stipulating the provision under which the notice was given.

It is submitted that, thereafter, a request for initiating a proceeding under Section 10(2) of the 1964 Act has been forwarded to the Sub-Divisional Magistrate, Egra.

It is further contended that, prior to the impugned notice being issued, the BL & LRO had demarcated the land and observed that the same was a Government land, encroached by the petitioners.

Learned counsel appearing for the private respondent submits that although a writ petition is pending at the behest of the private respondent, for a direction on the respondent authorities to take appropriate steps against the unauthorized occupants/petitioners, such pendency does not have a direct bearing on the present writ petition, since an eviction process has already been initiated.

Upon hearing learned counsel for the parties, it is evident that the mention of Section 1 of the Public Premises (Eviction of Unauthorized Occupants) Act is superfluous in the impugned notice dated April 6, 2022.

In substance, as also quoted in the body of the said notice, the same was issued under Section 10(1) of the West Bengal Highways Act, 1964.

In fact, thereafter, a request has been forwarded to the concerned Sub-Divisional Magistrate under Section

10(2) of the 1964 Act for initiating a proceeding for eviction of the alleged encroachers, that is, the petitioners.

The report filed in court today be kept on record.

It is clear from the materials-on-record that the respondent authorities did not commit any procedural error or illegality in initiating the proceeding under Section 10(1) of the 1964 Act.

The grievance of the writ petitioners, as far as not being given any opportunity to represent their case is concerned, the same has no legs to stand upon, since the petitioners will have ample scope of representation and hearing before the concerned authority in the proceeding initiated under Section 10 of the 1964 Act.

There is no flaw and/or illegality in the impugned notice under Section 10 of the Highways Act, 1964.

As such, there is no scope of interference in the present writ petition.

Accordingly, WPA 6765 of 2022 is dismissed without any order as to costs.

However, it is made clear that this court has not entered into the merits of the respective contentions of the parties insofar as the allegation of encroachment against the petitioners is concerned.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)