

Ct. 05
Item No.26
07.07.2022
(suvendu)

WPA 14172 of 2022
(Via Video Conference)

Habib Molla
Vs.
The State of West Bengal & Ors.

Mr. Ritzu Ghoshal
Mr. Sayantan Chatterjee
Mr. Anirban Ghosh
.....for the petitioner
Mr. Rajarshi Basu
Mr. Kapil Guha
.....for the State
Mr. Sarwar Jahan
Mr. Tapash Mondal
Mr. Maidul Islam Kayal
Mr. Sumit Naskar

....for the respondent nos. 11 & 12

The petitioner has challenged a series of Notices for demolition of the petitioner's alleged unauthorized premises, the last being of 21.06.2022. The ground of challenge is that the petitioner was not given an opportunity to make his case.

After hearing learned counsel, it appears that the Notice of 21.06.2022 was preceded by other Notices including of 03.11.2021. This is a Notice issued by the Kolkata National Highway Sub-Division Authority for removing the alleged unauthorized construction of the petitioner within

fourteen days from the date on which the Notice was served on the petitioner. The petitioner was given an opportunity of three working days from the date on which the Notice was served on the petitioner to make a representation to the Executive Engineer, National Highway Division –I.

The case made out by the petitioner, through his learned counsel, is that the Notice dated 03.11.2021 was not served on the petitioner in the manner as prescribed under Section 26 of The Control of National Highways (Land and Traffic) Act, 2002.

Section 26 of the 2002 Act deals with removal of unauthorized occupation. Under Section 26(2), the authorized officer of the Highway Administration upon being satisfied that any unauthorized occupation has taken place on the Highway land, shall serve a Notice in the prescribed form on the person responsible for such unauthorized occupation requiring him to remove such unauthorized occupation. Under Sub-section (3), the Notice under Sub-section (2) shall specify the land and the unauthorized occupation which is to be removed including the time and place of hearing of the representation to be made.

Admittedly, the Notice dated 03.11.2021 is a Notice under Section 26(2) of the Act.

However, it appears that the said Notice was affixed on the wall of the petitioner's alleged unauthorized construction which would be substantiated from the photographs annexed to the affidavit filed by the respondents.

Sub-section (4) of Section 26 requires that the Notice under Sub-section (2) to be delivered to the person to whom such Notice is addressed or to his agent or other person on his behalf or by registered post addressed to the person to whom such Notice is addressed along with an acknowledgement purporting to be signed by the concerned person or his agent.

Upon refusal of the concerned person to take delivery of the Notice, Sub-section (5) provides that the contents of the Notice shall be advertised in a local newspaper for the knowledge of the person to whom the Notice is addressed.

Affixation on the wall of the concerned unauthorized construction, as has been done in the present case, is not contemplated either under Section 26(4) or 26(5). The contention of the respondent that the petitioner has refused the service of the Notice would indicate that the Notice should have been served under Section 26(5) of the Act, i.e. advertisement in a local newspaper.

Since the recommended route for service of the Notice under Section 26(2) has not been done, the respondent authorities are directed not to give effect to the Notice dated 03.11.2021 until the sequence of steps contemplated under Section 26 are fulfilled by the concerned respondents.

WPA 14172 of 2022 is disposed of with a liberty to the respondent to comply with the requirements under Section 26 and proceed afresh in accordance with law.

Since the Notice dated 03.11.2021 has been quashed, all subsequent Notices in respect of the petitioner and the concerned premises shall cease to have any effect.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)