

ADSL. 1.
August 14, 2023.
MNS.

WPA No. 19701 of 2023

Mantu Gharami and others
Vs.
State of West Bengal and

Mr. Sagar Bandyopadhyay,
Mr. Pingal Bhattacharyya,
Mr. Subhankar Das

... for the petitioners.

Ms. Sima Adhikari,
Ms. Kakali Naskar

...for the State.

The present writ petition is being taken up with short notice on the State, in view of the extreme urgency involved.

By the impugned notice dated August 11, 2023, the alleged unauthorised occupiers encroaching upon the subject landed area have been directed to vacate the land and remove their belongings before 3 p.m. on August 13, 2023, that is, yesterday.

It is indicated in the said order that a proceeding to demolish all the unauthorised structures built on the said land will be initiated on August 13, 2023, 3 p.m. onwards.

Learned counsel for the petitioners contends that the said notice was issued palpably

de hors the law. In the said demolition notice, the Assistant Engineer, Joynagar Sub-Division, PWD, has cited an order dated August 4, 2023 passed in CPAN 278 of 2020 and an order dated March 20, 2019 passed in WPA No. 5652 of 2019.

It is contended that neither of the said orders contained anything to prompt the authorities to start a demolition drive.

Heard learned counsel appearing for the State as well as the petitioners.

Learned counsel for the petitioner is justified in arguing that nothing in the orders dated March 20, 2019 and/or August 4, 2023 indicate the demolition of any structure to be carried out on the property-in-question.

A bare perusal of the order dated March 20, 2019 passed in the said writ petition indicates that the learned Single Judge directed that the respondent no. 5 therein would visit the locale and prepare a site plan as to the area of the government property and the persons in occupation therewith, if there be any. If he finds that there is any person occupying government property, he will take expeditious steps for the purpose of removal of the same. If the property is a road, he will take steps under the provisions of

the West Bengal State Highways Act, 1964 (1964 Act). It was further expressed that the proceedings were expected to be initiated within a fortnight from the said date.

It is palpable from the said order that, even in terms of the order, in the event, any encroachment of government property was found out, the appropriate procedure to be adopted by the respondent authorities was to initiate proceedings under the 1964 Act. It is further indicated in the said order that the “proceedings” were to be “initiated” within a fortnight from the said date, and not that demolition was to be carried out outright.

Learned counsel for the petitioners also relied on the provisions of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (2014 Act), which also contemplate prior notice before taking any action under the same and also envisages several safeguards against the squatters, if they are street vendors within the contemplation of the 2014 Act.

In fact, none of the provisions of any law existing in India provide for eviction of a person in occupation of a property without following due

process of law. A cardinal principle of natural justice as well as the Rule of law is that a person, before being driven out from a property, has to be given an opportunity of hearing.

In the present case, the impugned notice has not complied with any such provision or is preceded by any such action. Hence, it cannot be sustained in the eye of law.

Although the order dated August 4, 2023 passed in CPAN 278 of 2020 has not been annexed physically to the writ petition, at the juncture of hearing, with the leave of court, learned counsel for the petitioners reads out the same from the official server of this Court.

There is nothing in the same to show that any direction was passed on any of the authorities to directly demolish all structures, authorized or unauthorized, standing on the disputed property, without following due process of law.

In view of the above discussion, this Court is of the opinion that inviting affidavits would stall the steps, if required to be taken by the Authorities, and not serve any useful purpose of either of the parties. Since the relevant documents have been annexed to the writ

petition, nothing further remains to be disclosed by way of affidavits. As affidavits are not being directed, it is deemed that nothing in the writ petition is admitted by the respondents.

The sole premise of the impugned notice was two orders passed in CPAN 278 of 2020 and WPA No. 5652 of 2019, which have been discussed above profusely. Those do not sanction the impugned act of the respondents.

In the light of the above observations, WPA No. 19701 of 2023 is allowed on contest, thereby setting aside the impugned notice dated August 11, 2023, bearing Memo No. 791.

Nothing, however, in the present order shall preclude the respondent authorities to initiate proceeding in accordance with law for eviction of unauthorised occupiers of the property, if any, following due process of law.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)