

09.10.2023
D.L.-5 & 6(KB)
Ct. No.-654

W.P.A. 26665 of 2022

**Arati Samanta
-Versus-
The State of West Bengal & Ors.**

**With
WPA 27755 of 2002**

**Jhantu Manna
Vs.
The State of West Bengal Ors.**

Mr. Sk. Rejaul Alam
... For the petitioner.
(WPA 26665 of 2022)

Mr. Chandi Charan De, Ld. A.G.P.
... For the State.

Mr. Ranjan Kali
... For the Petitioner.
(WPA 27755 of 2022)

Supplementary affidavit filed by respondent no. 8 in WPA 26665 is taken on record.

Mr. Ranjan Kali, learned advocate for respondent no.8 submits that Smt. Arati Samanta gifted her property to one Sudarshan Samanta by registered deed of gift in respect of the property in question. Further after death of the petitioner the writ petition is automatically abated.

Sk. Rejaul Alam, learned advocate for the petitioner concedes to the aforesaid submission.

Mr. Chandi Charan De, Learned Additional Government Pleader also submits that the writ petition has already abated upon death of the petitioner.

In view of submissions of learned advocate for respective parties, the writ petition being WPA 26665 of 2022 stands dismissed upon death of the petitioner.

Mr. Ranjan Kali, learned advocate for the petitioner in W.P.A. 27755 of 2022 submits that the petitioner in the writ petition has challenged the notice issued by the Executive Engineer for demolition of the structure. He further submits that prior to issuance of such notice the petitioner was not heard. More so, the Executive Engineer, is not authorised to issue such notice.

Mr. Chandi Charan De, learned Additional Government Pleader for State Respondents also submits that notice of eviction of unauthorised occupants from the government land as per the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 is to be issued by Sub-Divisional Officer. The Executive Engineer under the Act is not authorised to issue such notice.

Having heard the learned advocates for respective parties, I now proceed to decide the issue raised.

Section 3 of the Act of 1962 empowers the Collector to issue notice to show cause against the persons in unauthorised occupation. As per the Act, “*Collector*” means (a) in Calcutta, the Land Acquisition Collector, Calcutta, and (b) elsewhere, the Chief Officer-in-Charge of the revenue administration of the district,

and includes an Additional District Magistrate, a Sub-divisional Magistrate, and any Executive Magistrate specially appointed by the State Government to perform all or any of the functions of a Collector under this Act.

The aforesaid definition clearly manifest that the Sub-Assistant Engineer is not authorised to issue notice to show cause in terms of Section 3 of the Act of 1962. Such being the position the notice issued by Sub-Assistant Engineer-respondent no. 8 is liable to be set aside.

Accordingly, the writ petition is allowed. The notice dated 29.11.2022 issued by Sub-Assistant Engineer is set aside. No order as to costs.

All other connection application, if any, also disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary legal formalities.

(Bivas Pattanayak, J.)