

02.08.2024
Item No. 11
Crt.No.02
b.r.

WPA 19506 of 2024

Bapi Das & Ors.

-vs-

The State of West Bengal & Ors.

**Mr. Kumar Jyoti Tiwari
Mr. Manas Kumar Das
Mr. Aritra Kumar Thokdar
Mr. Aniruddha Tiwari
Mr. Amrit Sinha**

..... for the petitioners.

Mr. Lolit Mohan Mahata, Ld. AGP

Mr. Praanta Behari Mahata

.... For the State-Resp. nos. 1 to 7.

Affidavit of service filed in Court today, is taken on record.

Mr. Kumar Jyoti Tiwari, learned counsel, appears for the petitioners.

Mr. Lolit Mohan Mahata, learned Additional Government Pleader, appears for the respondent nos. 1 to 7.

Through this writ petition, the petitioners have challenged the impugned notice dated **July 29, 2024, annexure p-2 at page-37** to the writ petition issued by the respondent no.7 in exercise of its power under **Sub-Section 2 to Section 26** of the **Control of National High Way (Land and Traffic) Act, 2002 (for short, the said 2002 Act)**.

Learned counsel, Mr. Tiwari appearing for the petitioners submits that the petitioners are occupying

pieces of land on the side of the National Highway being **NH 512**. Learned counsel for the petitioners submits that the petitioners and/or some of them have valid trade licence and electricity bills showing their continuous possession on their respective portions of land.

Challenging the said impugned notice dated **July 29, 2024**, Mr. Tiwari submits there was no subjective satisfaction recorded in the notice with regard to eviction of the petitioners that the petitioners are unauthorized occupants and the authority issued the said notice with the pre-determined mind to evict the petitioners. The Highway Authority ought not to have exercised the provisions under the said **2002 Act** and the provisions ought to have been exercised under the **Public Premises Unauthorised Occupants Act**. There was no provisions under the said **2002 Act** to initiate any proceeding against the encroachers whereas under the **Public Premises Unauthorised Occupants Act** there are defined proceedings to be initiated against the encroachers. Hence, the process resorted in the instant case by the Highway Authority to remove the encroachers are without due process of law.

In support the learned counsel for the petitioners has referred to the following judgements:-

- (i) ***In the matter of : M/s. South Bengal Automobiles and another -vs- Union of India and others*** of a Co-ordinate Bench, rendered in ***WPA No. 22570 of 2016 with CAN 2 of 2021 dated August 11, 2022;***
- (ii) ***In the matter of : Sipra Maity and others -vs- General Manager, Eastern Railway and Others, reported at 2024 SCC Online Cal 1748.***

Learned Additional Government Pleader appearing for the respondent no. 7 submits that the due process of law has been invoked through the said provisions under **Section 26 of the 2002 Act** and there is no requirement for invoking any other provisions under any other statute to remove the encroachers and illegal occupants, like the petitioners, as the petitioners all are illegal occupants and encroachers on the Highway land.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, the petitioners have not been able to produce any scrap of evidence in support of their rightful and lawful permissive occupation on the Highway land.

The **2002 Act** is a complete Code. **Section 26** of the said **2002 Act** provides both rights and remedies to the relevant parties. It is not the case of the petitioners that

the said notice dated **July 29, 2024** has been issued without jurisdiction or without following the statutory requirement.

On a meaningful reading of the provisions laid down under **Section 26 of the 2002 Act**, it appears to this Court that, following the provisions laid down thereunder, the petitioners were granted an opportunity to remove themselves from their unauthorized occupation within **seven days** and the petitioners were invited to submit their representations within **two days** from the date of the notice, the statutory requirement has been complied with.

Since through the said notice the petitioners were granted opportunity to submit representations for consideration by the authority, it is incorrect to contend that the notice was issued with a predetermined mind. The notice being a statutory notice, the same is required to be issued according to the statutory provision. In absence of any requirement to arrive at a subjective satisfaction while issuing the notice under the statute, there is no requirement to record any subjective satisfaction in the notice.

The petitioners have submitted their representations in terms of the said notice dated **July 31, 2024, annexure p-3 at page-45** onwards to the writ petition.

In course of the hearing, this Court is informed by the learned Additional Government Pleader that, hearing has already taken place and the petitioners participated in the hearing before the appropriate authority.

In view of the above, it is clear that the petitioners have accepted the said notice by submitting their representations and also by participating in the hearing. In the event, the petitioners are aggrieved by the further decision of the Highway authority, they can pursue their remedies in accordance with law.

In both the above judgements, ***M/s. South Bengal Automobiles and another (supra) and Sipra Maity and others (supra)***, the judgements were delivered after considering the provisions under the **Railways Act of 1989**.

In the facts of the instant case, specific provisions of a specific statute, namely, the **2002 Act** has been invoked. The provisions laid down under the said **2002 Act** which is a self-contained Code has to be read in the light of the provisions made thereunder only and not in the light of any other statute. The law is well settled that, when a particular provision has been laid down in a specific statute, such provision has to be invoked in the specific manner as laid down in that specific statute or not at all. Other modes are expressly forbidden. Thus, the ratio laid down in both the said judgements have no

application in the facts of this case. Since the encroachment alleged on the National Highway land, for removal of such encroachment the relevant statute is the said 2002 Act.

In view of the foregoing reasons discussions, this Court is of the firm view that, this writ petition is totally devoid of any merit.

In the event, the Highway authority has taken a decision on the representation submitted by the petitioners, the same shall be communicated to the petitioners forthwith.

Resultantly, this writ petition, **WPA 19506 of 2024** stands **dismissed**, without any order as to costs.

(Aniruddha Roy, J.)