

20 12.11.2024
NB Ct. 17

WPA 27121 of 2024

Tuklu Kayal @ Taklu Kayal & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Anindya Lahiri,
Mr. Samrat Dey Paul,
Mr. Anish Chakraborty.
... for the petitioners.

Mr. Lalit Mohan Mahata,
Mr. Prasanta Behari Mahata.
...for the State.

Affidavit of service filed on behalf of the petitioners is taken on record.

It does not appear that the private respondent/complainant could be served with notice.

However, the State is represented.

Report filed on behalf of the State is also taken on record.

Learned counsel appearing on behalf of the petitioners submits as follows. The petitioners are challenging a notice vide Memo No:669 dated 30.10.2024 issued by the Sub-Divisional Official, Raidighi Irrigation Sub-Division, South 24-Parganas, thereby directing the petitioners to remove encroachments over the Irrigation and Waterways Land LR plot no.12, JL-107, Mouza Gilarchat, JL No.107 under Mathurapur-II Block, South 24-Parganas. The notice stated that as per complaint received from one of the respondents, the petitioners were requested to remove their permanent construction from the said land within

15 days from the date of the notice. This is in exercise of power under Section 4(1) of the West Bengal Public Land (Eviction of Unauthorised Occupants Act) 1962. However, this has to be preceded by a show cause notice under Section 3(1) of the said Act. But, no such show cause notice was given.

Learned counsel appearing on behalf of the State relies on the report, denies the allegations and submits that the land belongs to the Irrigation and Waterways Department and the petitioners are illegally blocking the ingress or egress into the said land. In view of the exigency, the impugned order was passed.

The statute in question clearly provides for a prior notice in terms of Section 3(1) of the said Act. Such notice was not given before passing the impugned order.

In the view of the above, the impugned order is set aside. However, if the respondent authorities want to remove the alleged encroachment from public land, they shall be at liberty to act in terms of the said Act, more particularly Sections 3 and 4 of the West Bengal Public Land (Eviction of Unauthorised Occupants Act) 1962 and otherwise in accordance with law.

With these observations, the writ petition is disposed of.

As affidavits were not called for, allegations contained in the writ petition are deemed not to have been admitted.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)