

Court No. 19
(265719)

20.01.2026
(AD 10)
(S. Banerjee)

WPA 29831 of 2025

Sankar Maity
Vs.
The State of West Bengal & Ors.

Mr. Tanmoy Mukherjee
Mr. Tamal Taru Panda

...for the petitioner

Mr. Wasim Ahmed
Sk. Md. Masud

...for the State

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

The petitioner has prayed for setting aside the
notice dated November 13, 2025 for removal of the
unauthorized structure at National Highway - 116B
(LHS) towards Digha near Bajkul VUP. The petitioner
claims to be the owner and occupier of a land being
LR Dag No. 1374, Khatian No. 964/1 within Mouza –
Bajkul, JL No. 154 under Bhupatinagar Police Station
in the district of Purba Medinipur measuring 1
decimals. The petitioner states that the petitioner has
not encroached upon any portion of the National
Highway and for such reason the petitioner has
approached this Court under Article 226 of the
Constitution of India.

Drawing the attention of the Court to the Record of Rights annexed to this writ petition, Mr. Mukherjee submits that the petitioner is the recorded raiyat in respect of plot nos. 1368 and the shop-room has been constructed on the said property and the petitioner has not encroached upon any portion of the National Highway.

Mr. Ghosh, learned Senior Government Advocate, submits that only a notice under Section 26(2) of the Control of Highways (Land and Traffic) Act, 2002 has been served upon the petitioner requesting the petitioner to appear on November 21, 2025 and also an opportunity was given to the petitioner to submit a representation within the time limit indicated in the said notice. He submits that the petitioner neither submitted any representation within the time limit indicated in the said notice nor did he appear before the concerned authority on the date fixed in the said notice. He submits that since the petitioner has not complied with the directions contained in the said notice, the concerned authorities approached the concerned Superintendent of Police, Purba Medinipur for rendering necessary assistance for removal of encroachment.

In reply Mr. Mukherjee, learned advocate appearing for the petitioner, draws the attention of

the Court to page 21 of the writ petition and submits that a representation dated November 24, 2025 has been submitted at the office of the concerned authority.

Heard the learned advocates for the parties and perused the materials placed.

Section 26 of the Control of National Highways (Land and Traffic) Act, 2002 ('the 2002 Act', for short) deals with removal of unauthorized occupation.

Sub-Section (2) of Section 26 of the 2002 Act states that when, as a result of the periodical inspection of Highway land or otherwise, the Highway Administration or the officer authorised by such Administration in this behalf is satisfied that any unauthorised occupation has taken place on highway land, the Highway Administration or the officer so authorised shall serve a notice in a prescribed form on the person causing or responsible for such unauthorised occupation requiring him to remove such unauthorised occupation and to restore such highway land in its original condition as before the unauthorised occupation within the period specified in the notice.

Sub-Section (3) of Section 26 of the 2002 Act states that the notice under sub-section (2) shall specify there in the highway land in respect of which such notice is issued, the period within which the unauthorised occupation on such land is required to be removed, the place and time of hearing any representation, if any, which the person to whom the notice is addressed may make within the time specified in the notice and that failure to comply with such notice shall render the person specified in the notice liable to penalty, and summary eviction from the highway land in respect of which such notice is issued, under sub-section (6).

Sub-Section (4) of Section 26 of the 2002 Act deals with the manner in which such notice is to be served.

Sub-Section (6) of Section 26 of the 2002 Act states that where the service of notice under sub-section (2) has been made under sub-section (4) or sub-section (5) and the unauthorised occupation on the highway land in respect of which such notice is served has not been removed within the time specified in the notice for such purpose and no reasonable cause has been shown before the Highway Administration or the officer authorised by such Administration in this behalf for not so removing

unauthorised occupation, the Highway Administration or such officer, as the case may be, shall cause such unauthorised occupation to be removed at the expenses of the Central Government or the State Government, as the case may be, and impose penalty on the person to whom the notice is addressed which shall be five hundred rupees per square metre of the land so unauthorisedly occupied and where the penalty so imposed is less than the cost of such land, the penalty may be extended equal to such cost.

Upon going through the notice dated November 13, 2025 annexed at pages 19-20 of the writ petition, this Court finds that the same was issued in accordance with the provisions laid down under sub-Section (3) of the Section 26 of the 2002 Act. The service of notice under Section 26(2) of the 2002 Act is also not disputed by the petitioner herein. It is also not in dispute that the petitioner has not submitted a representation within the time limit indicated in the said notice and the petitioner also did not appear before the concerned authority on the date and time indicated in the said notice.

For such reasons, this Court is not inclined to interfere with the notice under Section 26(2) of the 2002 Act.

However, since the petitioner has challenged such notice in this writ petition and also claims to have submitted a representation dated November 24, 2025, though beyond the time limit stipulated in the said notice, this Court is of the considered view that a direction upon the authorities to fix a further date of hearing would subserve the interest of justice.

Accordingly, this writ petition stands disposed of with the following directions:

The petitioner or his representative shall attend the office of the Executive Engineer, National Highway Division No. II, Public Works (Road) Directorate, Khaaragpore in the district of the Paschim Medinipur, being the 6th respondent herein, on February 4, 2026 on or about 12 noon for hearing.

The 6th respondent is directed to communicate the decision of such hearing to the petitioner immediately thereafter.

Since the date and time of hearing is fixed by this Court in the presence of the learned advocates for the respective parties, there would be no necessity to serve any notice of hearing to the petitioner.

The petitioner will be at liberty to submit a representation as indicated in the notice dated November 13, 2025 on or before January 28, 2026.

It is, however, made clear that in the event the petitioner fails to submit a representation within the time mentioned hereinbefore, the petitioner shall not be allowed to submit any further representation thereafter.

It will be open to the respondent authorities to take further steps in accordance with law.

The respondent authorities are restrained from taking any coercive steps against the petitioner till the communication of the decision of the hearing fixed on February 4, 2026.

(Hiranmay Bhattacharyya, J.)