
(2023) 01 MP CK 0103

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2073 Of 2023

Devendra Kumar Tyagi And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 25-01-2023

Acts Referred:

Citation : (2023) 01 MP CK 0103

Hon'ble Judges : Milind Ramesh Phadke, J

Bench : Single Bench

Advocate : Mahesh Goyal, Praveen Newaskar

Final Decision : Disposed Of

Judgement

Milind Ramesh Phadke, J

The present petition has been preferred by the petitioners against the notice dated 17.01.2023, which is alleged to be in form of an order whereby the petitioners have been called upon to remove the encroachment upon the land which allegedly belongs to the Railway Department, else Railway Department would carry out the eviction proceedings against the petitioners, for which they themselves would be responsible.

Learned counsel for the petitioners, at the outset, pointed out the very language of the notice which indicates that it is not a show-cause notice, calling the petitioners to show cause as to why the petitioners have encroached upon the said land, rather it is in the form of an order whereby they have been directed to remove the encroachment over the land without ascertaining the facts that whether they are the owner of the land or that the land belongs to the the Railway Department. It is contended that the notice being illegal deserves to be quashed.

Per contra, Shri Praveen Newaskar, learned Dy. Solicitor General contends that it is just a notice which petitioners need to reply and it is a settled principal of law

that against a show-cause notice, no writ is maintainable.

Heard counsel for the parties.

It is a well settled principle of law that against a show-cause notice, generally writ would not be maintainable unless the said show-cause notice is per se illegal or dehors any law or is issued by an incompetent authority but it is also a very well settled principle that by way of a notice an order, of any kind, cannot be issued, which appears to have been issued herein and petitioners are directed to vacate the land allegedly stating that it belongs to the Railway Department. Therefore, in the fitness of things, petitioners are directed to approach the Railway Authorities with a detailed reply appended with the documents relating to their title of the land and the respondent authorities are directed to pass a reasoned and speaking order taking into consideration the contents of the reply as well as documents appended thereto. Till the decision is taken by the authorities, no coercive measure, with regard to eviction of the petitioners shall be taken by the respondent authorities.

Petitioners are directed to approach the authorities by way of a reply within a period of 7 days and the respondent authorities are directed to pass a detailed, reasoned and speaking order within 15 days, thereafter the authorities may take appropriate decision.

With the aforesaid, the instant petition is disposed of.