

(2018) 06 CAL CK 0209
In the Calcutta High Court
Case No : Writ Petition8456 (W) of 2018

Rafikul Islam Sardar

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 25-06-2018

Acts Referred:

Control of National Highways (Land and Traffic) Act, 2002 — Section 26(2), 26(3)
West Bengal Land Acquisition (Amendment) Act, 1997 — Section 9(3)(a)
Constitution of India, 1950 — Article 226

Citation : (2018) 06 CAL CK 0209

Hon'ble Judges : HARISH TANDON, J

Bench : Single Bench

Advocate : Buddhadev Ghosal, Supratim Dhar, Keshab Chandra Das, Dhananjay Nayak, Tapas Kumar Adhikari

Final Decision : Disposed Of

Judgement

The challenge is made to a notice under Section 26 (2) of the Control of National Highways (Land and Traffic) Act, 2002 on 5th June, 2018 solely on

the premise that no compensation had ever been paid to the petitioner by the acquiring bodies. By the said notice, which was issued in a prescribed

form, the competent authority contemplated to take steps for removal of unauthorised encroachment on the acquired plot of land.

According to the petitioner, the tenet of the said notice suggests that the authorities shall remove the structure and shall virtually evict the petitioner

from the land with predetermined mind. My attention is drawn to the provisions of Section 26 (2) of the said Act, which provides a notice in prescribed

form to be served upon a person causing or responsible for such unauthorised occupation so that he may be removed from such occupation and the

highway land is restored to its original condition. Sub-section 3 of Section 26 of

the said Act further postulates that the period within which the unauthorised occupation on such land is required to be removed should be indicated in the said notice and in addition the place and time of hearing of any representation, which the person to whom the notice is addressed should also be specified.

It is thus manifest from the aforesaid provision that such notification is merely a show cause notice issued to a person, which in the opinion of the competent authority is in unauthorised occupation. It is also not in dispute that such notice is required to be issued in a prescribed form and my perusal of the said notice leaves no doubt that it has been done so. The Court should not interfere with the show cause notice in a routine manner, as the authority has not decided the cause finally. Once an opportunity to make representation/objection is provided in the said notice and an opportunity of hearing is also to be afforded to the person, the Court should seldom interfere at such stage, unless the authority decides the pleas made in the representation/objection.

No case has been made out over the incompetence of the signatory of the said notice or that the notice is vague and ambiguous or not in conformity with the prescribed form. Though the period for filing representation/objection has elapsed, but the learned advocate appearing for the respondent authorities submits that till date no final order has been passed nor any steps has been taken therefor. A serious question is raised over the status of a person by the respondents, which has been countered by the petitioner by producing several notices issued under Section 9(3)(a) of the West Bengal Land Acquisition (Amendment) Act, 1997; by virtue whereof Act-II of 48 was repealed.

It is submitted by the petitioner that upon issuance of such notice in the name of the predecessor-in-interest of the petitioner the requisition/acquisition made under Act-II of 48 is deemed to have been taken under Act-I of 1894 and, therefore, the compensation should be paid to a person, whose land has been requisitioned/acquired by National Highway Authority. It is further submitted that the status of a person is not in dispute and such flimsy ground has been taken to negative the claim of compensation and, therefore, the show cause notice should be quashed and set aside.

All such pleas are available to the petitioner and if taken in the representation/

objection, it is the duty of the competent authority to decide the same.

The High Court should not usurp the power of administrative or statutory authority and take up the task of deciding the cause under Article 226 of the Constitution of India. Such power is not to be exercised against the decision, but certainly interference can be made in a decision making process.

Since the authorities have not decided the matter, it is not proper to interfere with the show cause notice. Since no decision or steps has been taken on

the basis of the said show cause notice, this Court feels that an opportunity should be given to the petitioner to make a representation/objection before

the said authority, who issued the said show cause notice. Accordingly, this Court permits the petitioner to file a representation/objection within seven

days from date. In the event such representation/objection is filed within the aforesaid period, the authority shall fix the date of hearing within seven

days from the date of filing such representation/objection and shall afford an opportunity of hearing before any final decision is taken.

It goes without saying that the said authority shall record reasons for such decision upon dealing with all the points raised before him. Nothing in this

order shall be construed to have any persuasive value in the said proceeding, which shall be decided independently and in accordance with law.

Another relief is claimed in the instant writ petition against the action by the National Highway Authorities in putting up an iron fencing thereby

blocking access to the unacquired portion of the land. It appears that the petitioner has approached the respondent nos. 4 to 9 by making a

representation alleging such construction of putting iron fence, but the authorities have not paid any heed to it.

The further grievance of the petitioner in the instant writ petition is inaction on the part of the competent authority to decide the pleas raised in the said

representation by the petitioner. It is submitted by the learned advocate for the petitioner that previously an identical construction was sought to be

made, but the petitioner was prevented from making any boundary wall covering the unacquired portion of land and an approach was made to this

Court and ultimately a direction was passed upon the authorities not to create any obstruction by making a boundary wall and such boundary wall was

constructed in presence of the police authorities.

Without venturing into the aforesaid aspect once the petitioner has approached

the authorities alleging such action, it is a bounden duty of the authority to take a decision and communicate the same to the petitioner. The respondent no. 4 is a competent authority and therefore, this Court directs the said respondent to consider the representation filed by the petitioner and dispose of the same within four weeks from the date of the communication of this order after affording an opportunity of hearing to the petitioner or his authorised representative, in accordance with law. With the above observations, the writ petition is disposed of. There will be no order as to costs.