In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 21480 of 2019

Debasis Ray & Ors.

VS.

The State of West Bengal & Ors.

and

WPA 19815 of 2021

Debasis Ray & Anr.

VS.

The State of West Bengal & Ors.

For the Petitioners	:	Mr. Prabal Kumar Mukherjee, Sr. Adv. Mr. Arpan Guha
For the respondent/State In WPA 21480 if 2019	:	Mr. Nikunj Berlia Mr. Rajdeep Bhattacharya
For the respondent/State In WPA 19815 of 2021	:	Mr. Partha Banerjee Mr. Devendra Prasad
Heard on	:	13.11.2026
Judgment on	:	13.11.2026

Partha Sarathi Sen, J.:-

1. In WPA 21480 of 2019 as well as in WPA 19815 of 2021, the writ petitioners and the respondents/State are represented by the respective counsel.

2. On careful perusal of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties this Court is of the considered view that the instant two writ petitions are well connected and the subject matter of the instant two writ petitions are also identical.

3. In view of such, this Court proposes to dispose of both the writ petitions by a common judgment.

4. The subject matter of WPA 21480 of 2019 is the notice dated 16.09.2019 as issued by the SDO Barasat, Sadar Sub-Division, North 24 Parganas (hereinafter referred to as the 'jurisdictional SDO' in short) whereby and whereunder a copy of the minutes of the meeting dated 27.09.2019 was forwarded to the writ petitioners. In the minutes of the said meeting dated 27.09.2019, it was observed that the present petitioners are found to be encroachers of 15 decimals of Government land situated over Dag No. 332/1965 which stands recorded in the name of Habra State General Hospital. In the said meeting, the State authorities have directed the present writ petitioners to produce their papers and documents to substantiate their lawful occupation over the alleged encroached property which is subject matter of instant two writ petitions.

5. By filing WPA 19815 of 2021, the petitioners have impugned a notice under Section 3(1) of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 (the 'said Act' in short) as served upon the present petitioners. By the impugned notice dated 23.11.2021,

the jurisdictional SDO, being the Collector within the meaning of Section 2(1) of the said Act opined that the aforementioned public land has been unauthorisedly occupied by the writ petitioners and accordingly, pursuant to the said impugned notice, the jurisdictional SDO directed the writ petitioners to show cause as to why he shall not pass an order of eviction under Section 4(1)(a) of the said Act from the said alleged unauthorised encroachment.

6. At the time of hearing, Mr. Mukherjee, learned senior advocate appearing on behalf of the writ petitioners submits before this Court that it is the specific case of the petitioners in both the aforementioned two writ petitions that the present writ petitioners are the lawful occupiers of the property as involved in the aforementioned impugned notice dated 16.09.2019 as well as the impugned notice under Section 3(1) of the said Act dated 23.11.2021. It is further submitted by Mr. Mukherjee that prior to filing of WPA 21480 of 2019, the present petitioners at the meeting dated 27.09.2019 produced all relevant documents of their right, title and interest over the property in question before the jurisdictional SDO, which was not at all considered favourably by the said SDO, which is why the impugned notice dated 23.11.2021 under Section 3(1) of the said Act was issued which clearly shows that close mind of the jurisdictional SDO and thus appropriate relief/reliefs may be granted to the writ petitioners in terms of the prayers made in the instant two writ petitions.

7. It is further submitted by Mr. Mukherjee that even before this High Court, the present writ petitioners have produced sufficient documents of their right, title and interest over the property in question which has been duly considered on the earlier occasions during the pendency of the instant two writ petitions by several Co-ordinate Benches.

8. It is, thus argued by Mr. Mukherjee that in view of such there cannot be any difficulty to set aside the impugned notice dated 23.11.2021 as issued by the jurisdictional SDO under Section 3(1) of the said Act.

9. Mr. Berlia, learned advocate appearing on behalf of the respondent State in WPA 21480 of 2019 and Mr. Banerjee, learned advocate appearing on behalf of the respondent State in WPA 19815 of 2021 conjointly submit before this Court that both the two writ petitions are premature and there cannot be any cause of action for filing the instant two writ petitions. Drawing attention to Section 3 of the said Act both Mr. Berlia and Mr. Banerjee, learned advocates for the State submitted that it is the legislative mandate that, in the event, the Collector within the meaning of Section 2 of the said Act forms an opinion upon an application made by an Officer of the owner of the public land authorized in this behalf by such owner or upon information received otherwise that a public land is unauthorized occupation of any person, the said Collector is competent to issue notice under Section 3(1) of the said Act. Drawing attention to the minutes of the meeting dated 27.09.2019 as has been annexed at page no.199 in WPA 21480 of 2019, it is submitted by both the learned

counsel for the respondent State that since despite giving due opportunity to the writ petitioners the present writ petitioners have miserably failed to substantiate their independent right, title and interest over the encroached public land, the jurisdictional SDO being the Collector within the meaning of Section 2 of the said Act is quite competent to issue the notice under Section 3(1) of the said Act.

10. It is further submitted on behalf of the respondent State that on perusal of the impugned notice dated 23.11.2021, it would reveal further that the jurisdictional SDO made no venture to evict the present writ petitioners from his settled possession without due course of law rather has given opportunity to the petitioners to show cause to substantiate their right, title and interest over the alleged encroached property. It is, thus, submitted by Mr. Berlia and Mr. Banerjee, learned advocates that there cannot be any occasion to grant any relief to the present writ petitioners.

11. This Court has meticulously gone through the materials as placed before this Court. This Court has given due consideration over the submissions of the learned advocates for the contending parties.

12. For effective adjudication of the instant two writ petitions, this Court at the very outset proposes to look to some of the relevant provisions of the said Act , which are as under: -

> "**2. *Definitions.* –** *In this Act, unless there is anything repugnant in the subject or context,-*
>
> *(1) "Collector" means-*
>
> *(a) in Calcutta, the Land Acquisition Collector, Calcutta, and*

(b) elsewhere, the Chief Officer-in-Charge of the revenue administration of the district, and includes an Additional District Magistrate, a Sub-divisional Magistrate, and) any [Executive Magistrate) specially appointed by the State Government to perform all or any of the functions of a Collector under this Act.

Explanation. – In this clause "Calcutta" has the same meaning as in the Calcutta Municipal Act, 1951;

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(5) "person concerned" in relation to any public land, means any person who is in the use or occupation of the public land;

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(7) "public land" means any land belonging to, or taken or lease by, the State Government, a local authority, a Government company or a corporation owned or controlled by the Central or the State Government and includes any land requisitioned by, or on behalf of, the State Government, but does not include a Government road or a highway with the meaning of the Bengal Highways Act, 1925, or any other law for the time being in force on the subject.

Explanation. – In this cause "Government company" means a Government company within the meansing of section 617 of the Companies Act, 1956.

(8) "unauthorised occupation", in relation to any public land means the use or occupation by any person of the public land without authority in writing by or on behalf of the owner thereof (and includes the continued use or occupation of any such land on the expiry or termination of such authority.]

3. Issue of notice to show cause against order for eviction of unauthorised occupant from public land. - (1) *If, in respect of any public land, the Collector is of opinion, upon application made by an officer of the owner of the public land authorised in this behalf by such*

owner or upon information received otherwise, that the public land is in the unauthorised occupation of any person or persons, the Collector shall issue "la notice in such from and containing such particulars as may be prescribed calling upon all person concerned] to show-cause before such date, not being less than fifteen days after the date of the notice, as may specified in the notice why an order under sub-section (1) of section 4 should not be made, and shall cause it to be served in the manner referred to in sub-section (2). Intimation of the date so specified shall be given to the owner of the puble land and to its officer authorised under this sub-section.

(2) A notice issued under sub-section (1) shall be served by affixing it on a conspicuous part of the public land concerned and in such other manner as may prescribed.

(3) A notice served in the manner referred to in sub-section (2) shall be deemed to have been duly served.

4. Order of eviction of person in unauthorised occupation from public land. *- (1) If after considering the cause, if any, shown by any person in pursuance of a notice issued under section 3 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the Collector is satisfied that the public land is in unauthorised occupation, he shall make an order of eviction directing all persons in such authorised occupation to vacate the public land and deliver possession thereof to owner within such time as may be specified in the order.*

(2) The Collector shall cause a copy of the order made under clause (a) of sub-section (1) to be served in the manner referred to in sub-section (2) of section 3.

5. Collector's power to enforce delivery of possession by evicting unauthorised occupants. *- **(1)** If, in respect of any public land or part thereof, any person concerned refuses or fails to comply with an order made under sub-section (1) of section 4 within the time*

specified in the order, the Collector shall enforce delivery of possession of such public land or part thereof to the owner after evicting the person concerned and for this purpose the Collector, or any officer authorised by him, may take such steps or use such force as may be necessary.

13. On careful perusal of the aforementioned legislative provisions, it is, thus, clear that the jurisdictional SDO very much comes within the definition of 'Collector' under Section 2(1) of the said Act. Section 2(7) defines the 'public land' and Section 2(8) defines 'unauthorized occupation'.

14. At this juncture, if I look to Section 3 of the said Act, it appears to this Court that it is the legislative mandate that, in the event, the Collector is of the opinion that a public land is in unauthorized occupation, the Collector is duty bound to issue a notice upon the alleged encroachers to show cause within a specified time as to why he shall not initiate a proceeding for eviction for removal of unauthorized occupation from the public land.

15. Keeping in mind the aforementioned legislative provision, if I look to the factual aspects as involved in the instant two writ petitions, it appears to this Court that for some reasons or other, the jurisdictional SDO has come to a *prima facie* opinion upon consideration of all the documents as furnished before him by the writ petitioners that a public land is in unauthorized occupation at the instance of the present writ petitioners and for that reasons, he has served a notice under Section 3(1) of the said Act dated 23.12.2021, which is impugned in WPA 19815 of 2021.

16. In course of his argument, Mr. Mukherjee though contended that issuance of notice dated 16.09.2019 enclosing therewith the minutes of the meeting dated 27.09.2019 and the notice under Section 3(1) of the said Act dated 23.11.2021 presupposes the closed mind of the jurisdictional SDO, however, in considered view of this Court the opinion formed by the jurisdictional SDO while issuing the said two impugned notices are merely tentative in nature as otherwise the said jurisdictional SDO would not have direct the present writ petitioners to show cause as to why he shall not initiate proceeding for eviction of unauthorized occupation under Section 4 of the said Act.

17. In considered view of this Court, the jurisdictional SDO while issuing the impugned notice dated 23.11.2025 under Section 3(1) of the said Act made no legal infermity and/or procedural error and on the contrary in considered view of this Court he was very much justified in issuing the said notice after giving due opportunity to the writ petitioners to substantiate their right, title and interest over the property in question.

18. Though in course of argument, Mr. Mukherjee contended that sufficient materials have been placed before this Court in connection with the instant two writ petitions regarding the lawful occupation of the present writ petitioners over the alleged public land, however, with deepest respect to Mr. Mukherjee, this Court cannot accept such contention of the writ petitioners inasmuch as sitting in writ jurisdiction, this Court cannot adjudicate right, title and interest of a party before it since it

lacks the machinery to decide such questions. In further appears to this Court that, in the event, this Court sitting in writ jurisdiction made an endeavour to decide the right, title and interest of the petitioners over the alleged public land that would tantamount to encroachment to the jurisdiction of the Collector within the meaning of Section 2(1) of he said Act.

19. It further appears to this Court that the present writ petitioners ought to have approached the Collector i.e. the jurisdictional SDO by submitting their show-cause supported by relevant documents/evidence to substantiate their independent right, title and interest over the alleged public land instead of filing the instant two writ petitions.

20. In view of the discussions made hereinabove, this Court, thus, finds no merit in the instant two writ petitions.

21. Accordingly, WPA 21480 of 2019 and WPA 19815 of 2021 are dismissed.

22. The interim order, if there be any, stands hereby vacated.

23. Before parting with, this Court, however, grants liberty to the present writ petitioners to submit their reply/show-cause along with supportive evidence to the impugned notice dated 23.11.2021 as served upon them under Section 3(1) of the said Act before the respondent no.4 in WPA 19815 of 2021 positively within fifteen working days from today and, in the event, any such reply/show-cause is filed, the respondent no.4 authority in WPA 19815 of 2021 is directed to pass a reasoned order upon such reply/show-cause of the writ petitioners after giving due

opportunity of hearing to the writ petitioners and/or their authorized representatives and shall forthwith communicate the same to the writ petitioners.

24. The entire exercise as indicated in the foregoing paragraph shall have to be completed by the respondent no.4 authority in WPA 19815 of 2021 within thirty working days from the date of submission of the show-cause/reply by the present writ petitioners.

25. The time limits, as fixed by this Court, are peremptory and mandatory and the same shall be binding both upon the writ petitioners and the respondent no.4 authority in WPA 19815 of 2021.

26. It is further directed that, in the event, while passing the reasoned order, the respondent no.4 authority in WPA 19815 of 2021 finds no merit in the reply/show-cause as would be submitted by the present writ petitioners, he is directed to take all consequential actions under Section 4 of the said Act soon thereafter.

27. Liberty is given to the learned advocate-on-record for the respondent State to communicate the server copy of this order to the respondent no.4 authority, who are directed to act on the sever copy of this order.

28. It is further directed that till passing of the reasoned order by the respondent no.4 authority in WPA 19815 of 2021, the respondent State and its instrumentalities including the respondent no.4 in WPA 19815 of 2021 shall not disturb the possession of the present writ petitioners in

respect of the property, which is subject matter of the instant two writ petitions.

29. With the aforesaid observations, the instant two writ petitions are **dismissed**.

30. There shall, however, no order as to costs.

31. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)

[S.R (AR (C)/Sws.M[AR(C]