

AD-18
Ct No.09
16.04.2024
TN

WPA No. 8027 of 2024

Ashadul Sekh and others
Vs.
The State of West Bengal and others

Mr. Shantanu Chakraborty,
Mr. Abhishek Sikdar,
Ms. Sahili Dey,
Mr. Deeptangshu Kar,
Mr. Purbayan Chakraborty

.... for the petitioners

Ms. Noelle Banerjee,
Mr. Ovik Sengupta

.... for the State

- 1.** The petitioners have made out a strong *prima facie* case in their representative capacity. Leave is accordingly granted to the petitioners to represent the interest of all the residents coming within the purview of the Forest Rights Act, 2006 (hereinafter referred to as “the 2006 Act”) residing within the forest areas of Palashgachhi Bahadurpur Beat, Krishnagar Range, District: Nadia, West Bengal.
- 2.** It is contended by learned counsel for the petitioners that the petitioners come within the definition of “other traditional forest dweller”, as defined in Section 2(o) of the 2006 Act which means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forest land for *bona fide* livelihood needs.

3. In the explanation thereto, “generation” has been defined as a period comprised of twenty-five years.
4. The petitioners have produced varied documents as annexures to the writ petition, including their grandfathers’ *khajna dakhila* under the original zamindar, domicile documents, heirship certificates and/or certificates issued by elders in the locality as contemplated under the said Act and the Rules framed thereunder. However, it is argued that the process of recognition of rights in the said area has not yet been commenced by the respondent-authorities under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 (for short “the 2007 Rules”).
5. Rule 12A, it is argued, envisages a detailed procedure where, at several tiers, assessment is made as to the claims of forest dwellers and a decision taken on the recognition of their rights. The petitioners, it is contended, have already made their claims under the said provision along with other similarly placed forest dwellers but nothing has been done by the respondents in that regard.
6. In the meantime, the immediate cause of action for the writ petition arose by way of a blanket notice dated January 02, 2024, without any specific mention of the addressees, which has been affixed in the locality, which indicates that the residents of the Palashgachhi Bahadurpur Beat of the Krishnagar Range at large are

asked to stop entering the forest land and also cultivating vegetable flower and pulses from the date of issue of the notice. The said notice is *prima facie* also bad since no prior notice of hearing or opportunity of presenting any representation was given to the addresses thereof. Moreover, the impugned notice does not disclose the exact addressees of its addressees to meaningfully enable them to make representations or claim a right of hearing before the authorities. In such blanket and sweeping manner, the rights of the forest dwellers cannot be taken away in a fell swoop.

7. Thus, the petitioners have made out a strong *prima facie* case for hearing of the writ petition on merits.
8. At this juncture, a report is filed by learned counsel appearing for the State, who submits that the State respondent does not want to use any affidavit-in-opposition to the writ petition but the writ petition be disposed of today itself.
9. In the said report, learned counsel for the State contends, it has been mentioned that the petitioners do not have any right whatsoever to the forest land-in-question. Moreover, it is argued that sufficient documents have not been produced by the petitioners to establish their rights to come within the purview of the 2006 Act.
10. However, the very premise of such arguments of the State is misplaced, in the absence of anything to show that the process of recognition rights as envisaged in

Rule 12A of the 2007 Rules have been initiated in the locality at all.

- 11.** Without undertaking such exercise, it does not lie in the mouth of the State to deny the rights of claimants on such count.
- 12.** In fact, Rule 12A contemplates a detailed procedure. For example, Sub-Rule (6) thereof, as rightly pointed out by learned counsel for the petitioners, stipulates that the Sub-Divisional Level Committee or the District Level Committee shall remand the claim to the Gram Sabha for re-consideration instead of modifying or rejecting the same, in case the resolution or the recommendation of the Gram Sabha is found to be incomplete or prima-facie requires additional examination.
- 13.** Hence, it is palpable that the notice issued by the Forest Range Officer, Krishnagar Range, which was not preceded by any such exercise and purports to oust the petitioners from their forest dwellings and to deprive them and others of the locality on similar footing of their rights under the 2006 Act, was *de hors* the law and palpably without jurisdiction.
- 14.** As such, since the State does not wish to use any affidavit-in-opposition, the writ petition is being disposed of here and now, keeping on record the affidavit-of-service filed today by the petitioners as well as the report filed by learned counsel for the State.

- 15.** WPA No. 8027 of 2024 is, accordingly, allowed on contest, thereby setting aside the impugned notice dated January 02, 2024.
- 16.** The respondent-authorities are directed to initiate the required proceedings for recognition of rights of the forest dwellers as spelt out in Rule 12A of the 2007 Rules, in consonance with the law laid down in the Forest Rights Act, 2006 for the concerned area. Only upon ascertaining the respective rights of the claimants under the said Rules and the Act shall the respondents be entitled to take any step for eviction of the residents in the said area who do not come within the purview of the 2006 Act.
- 17.** The respondents shall remain restrained from taking any action for eviction of the forest dwellers and those coming within the protective umbrella of the 2006 Act in the concerned beat, that is, the Palashgachhi Bahadurpur Beat, Krishnagar Range, District: Nadia till such process under Rule 12A is complete for the area.
- 18.** There will be no order as to costs.
- 19.** Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)