

24.12.2020
DL-3
ns Ct.4

WPA No.9932 of 2020

**Sri Hari Mohan Singh.
Versus
The State of West Bengal & Ors.**

Mr. Achintya Kr. Banerjee,
Mr. Anand Fermania,
Ms. Indu Mouli .. for petitioner.

Mr. Raghunath Chakraborty ... for the Municipality.

Mr. Raja Saha,
Ms. Rupsha Chakraborty ... for State.

This writ petition has been listed under heading “To Be Mentioned” at instance of petitioner, for purpose of extension of interim order. Mr. Chakraborty, learned advocate appears on behalf of the Municipality and opposes extension. So does Mr. Saha, learned advocate appears on behalf of State. On query from Court, parties are ready for hearing at this stage.

Mr. Banerjee, learned advocate appears on behalf of petitioner and relies on interim order dated 2nd December, 2020 passed by coordinate Bench (Tapabrata Chakraborty, J). Following from said order is quoted below:

*“Prima facie it appears that the issuance
of the memo dated 26th November, 2020*

was not preceded by way enquiry to ascertain as to whether Government land has been encroached by the petitioner. No order of demolition also appears to have been issued by the Municipality.

In view thereof, the respondents are restrained from demolishing the structures existing on the petitioner's land, as detailed in paragraph 3 of the writ petition for a period of three weeks from date or until further orders whichever is earlier."

He draws attention to section 10(1) in Highways Act, 1964.

Mr. Saha submits, there is no requirement for enquiry on notice to the person, for issuance of a notice under section 10(1). What is mandated is notice requiring the person to remove the encroachment and restore the highway to its original condition. As such, the notice is a good notice. Mr. Chakraborty draws attention to annexure "P/5", which is memo dated 16th October, 2020, clearly stating that petitioner is constructing building without sanction plan or deviating from sanction plan and to discontinue the work. Further, petitioner was required to attend office of building section, Sub Assistant Engineer along with sanction plan or settlement records. Reply by petitioner is assertion of repair work. No sanction plan nor

settlement record was produced nor enclosed with the letter.

Text of impugned notice is reproduced below:

“It is found during site visit that you have constructed a permanent structure on P.W.D. land along Akra Santoshpur Taratala Road near Police Outpost of Rabindranagar Police Station (Beside Arti Diagnostics) which will cause permanent hindrances for future development of the road. Maheshtala Municipality has also complained for that encroachment.

On behalf of the Highway Authority, Govt. of West Bengal, you are requested to remove said encroachment and to restore the government land in original position within 7 b(Seven) days after received of this notice, failing which further proceedings will be initiated towards removal of unauthorized encroachment as per West Bengal Highway Act, 1964.”

As has been correctly pointed out by Mr. Saha, section 10 does not require as a pre-condition, enquiry on notice to the person, in this case being petitioner. Alipur Highway Sub Division has found construction on P.W.D. land and petitioner has been requested to remove the encroachment and restore Government land, failing which further proceedings will be initiated towards removal of unauthorised encroachment as per the Act. Petitioner, therefore, will have opportunity to justify existence of the

structure, whether it is new or under repair. Furthermore petitioner will also have opportunity to show that it is not standing on part of the road. That said there is no reason to interfere with the notice. It is made clear that the authorities must act in accordance with law, as they have said they will in impugned notice.

With above finding and observation, this writ petition is disposed of.

Since affidavits have not been called for, allegations in the petition cannot be deemed to be admitted by respondents.

(Arindam Sinha, J.)