

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Through Video Conference)

WPA 6710 of 2021
(Assigned)

Sahad Ali Mondal
Vs.
The State of West Bengal & Ors.

Mr. Abdul Aziz Mondal
... For the petitioner

Ms. Manali Biswas
... For the respondent no.9

The petitioner says that a road maintained by the Public Works Department, Government of West Bengal (in short “PWD”), connecting Berhampore in the district of Murshidabad to Radhanagar also in the same district is in front of his house situate at Dag no.4420 in Mouza – Patikabari under Police Station – Nowda in the district of Murshidabad. The respondent no.9 (private respondent), according to the petitioner, had constructed a temporary shop room on the PWD land situate between the metal portion of the road and the petitioner’s premises. The petitioner further says that the respondent no.9 is now attempting to make a permanent construction replacing the temporary wall. The petitioner had made a representation to the Executive Engineer, Highway Division No.1, Public Works Department (Roads), Berhampore, District – Murshidabad, on 23rd December,

2020 informing about such act of the respondent no.9. The petitioner had also made representations on the same date to the District Magistrate, Murshidabad; the SDO (Sadar), Berhampore, Murshidabad; the Block Development Officer, Amtala, Nowda, Murshidabad; the BL & LRO, Amtala, Nowda, Murshidabad as also to the Prodhan of the concerned Panchayat.

The petitioner further says that by a letter dated 29th December, 2020, the Assistant Engineer, Berhampur Highway Sub-Division, PW (Roads) Directorate, requested the Officer-in-Charge, Nowda Police Station, to stop the unauthorised encroachment on Government land at the site indicated in the said letter. A further letter renewing such request was written by the Assistant Engineer, Berhampur Highway Sub-Division, PW (Roads) Directorate, to the Officer-in-Charge, Nowda Police Station, on 27th January, 2021. The petitioner further says that despite such letters from the Assistant Engineer, Berhampur Highway Sub-Division, PW (Roads) Directorate, no steps have been taken by the police authority which amounts to inaction on the part of the respondents, resulting in filing of the instant writ petition.

On behalf of respondent no.9, it is submitted that from the temporary structure the respondent no.9 operates a shop room. There was an incident of theft by breaking down one of the walls of the said temporary structure and the respondent no.9 had only repaired the

broken wall. No *pucca* construction as alleged by the petitioner had been undertaken by the respondent no.9.

The moot question as appears from the materials on record and the submissions made on behalf of the petitioner and the respondent no.9 is the allegation of unauthorised construction and encroachment of Government land. The Executive Engineer, Murshidabad Highway Division No.1, PWD (Roads), Government of West Bengal, is the authority who should look into the issue and if necessary may call for necessary demarcation by the concerned BL & LRO regarding the Government land. The matter before the concerned Executive Engineer has to be brought to a logical conclusion otherwise no temporary measure like the request made to the Officer-in-Charge by the Assistant Engineer respectively on 29th December, 2020 and 27th January, 2021 will be of any avail.

The said Executive Engineer shall dispose of the issue of encroachment alleged against the respondent no.9 in the petitioner's representation dated 23rd December, 2020 in accordance with law after affording a reasonable opportunity to the petitioner, the respondent no.9 and State representative to represent their case. The Executive Engineer in order to dispose of the case may obtain a report from the concerned BL & LRO as to the nature and character of the land said to have been encroached upon by the respondent no.9.

The Executive Engineer will also be free to have the land demarcated and if it is found that the land on which the respondent no.9 has constructed the shop room is a Government land, necessary steps as a consequence thereof shall follow.

The Executive Engineer shall dispose of the petitioner's representation dated 23rd December, 2020 within a period of six months from date by a reasoned order and shall communicate his decision to the petitioner and the respondent no.9.

The petitioner shall communicate a copy of this order within seven days from date to the respondents no.3 and 4, respectively, being the Executive Engineer, Murshidabad Highway Division No.1, PWD (Roads) and the Assistant Engineer, Berhampur Highway Sub-Division, PW (Roads) Directorate.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)