

03/02/2021
Item No. 23 DL
Court No.38
S. DE

Through Video Conference

W.P.A. 4938 of 2020

Nirup Kumar Ghosh.

-Vs-

The State of West Bengal & Ors.

Mr. Panchanan Hazra

...for the petitioner.

Mr. Chandi Charan De, Ld. Addl. Govt. Pleader

Mr. Somnath Mukhopadhyay

...for the State

The petitioner challenges a notice served on him under Section 10(1) of the West Bengal Highways Act 1964. The petitioner says that he has not encroached on any Government land and the concerned plot of land is not acquired land.

Learned advocate for the State rightly points out that the petitioner has an alternative remedy under Section 10(4) of the 1964 Act.

It is trite law that although, availability of an alternative remedy is not a complete bar to the maintainability of a writ petition, excepting for a few cases like lack of jurisdiction, breach of natural justice, etc., the writ court declines to exercise the high prerogative writ jurisdiction, where an efficacious alternative remedy is available.

In the present case, the petitioner has only received a notice for removal of encroachment. The

petitioner may take the stand that there is no encroachment and in any event, nothing that requires to be removed. The Highways Authority may approach the Executive Magistrate under Section 10(2) of the 1964 Act and following due procedure as prescribed in Sub-Sections 2 and 3 of Section 10, the Executive Magistrate may pass an order for removal of any encroachment. At this stage, the petitioner will have a statutory right of appeal before the concerned District Magistrate.

In view of the above, I am not inclined to entertain this writ petition and dispose of the same without going into the merits of the case.

Since I have not called for affidavits, the allegations contained in the writ petition are deemed not be admitted by the respondents.

W.P.A. 4938 of 2020 is, accordingly disposed of.

There will be no order as to costs.

Urgent certified copy of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(Arijit Banerjee, J.)

