

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

**WPA 10485 of 2021**

Swadhin Das & Ors.  
Vs.  
The State of West Bengal & Ors.

Mr. Kaustav Chandra Das  
Mr. Subhankar Roy  
... For the petitioners

Affidavit of service filed in Court today is taken on record.

The petitioners say that the petitioners are the owners of a land and structure situate at LR Dag nos.3175, 3177 and 3178, measuring about 7½ decimal (hereinafter referred to as the “said property”). The said property is situated beside the road connecting Contain to Belda which, according to the petitioners, is a road covered under the West Bengal Highways Act, 1964. The petitioners say that in between the metal portion of the road and the said property, there is a portion of land owned by the Public Works Department (in short “PWD”). The petitioners complain of encroachment on a portion of such PWD land by the respondents no.8, 9, 10 and 11 (private respondents). The encroachment, according to the petitioners, is also creating hindrance to free ingress and egress of the petitioners from the said property. The

petitioners have made a complaint on 20<sup>th</sup> April, 2021 to the Assistant Engineer, Contai Highway Sub-Division, Public Works Department (Road), Government of West Bengal. No steps, according to the petitioners, have been taken as yet in terms of the said complaint.

In the absence of the respondents, the matter is taken up as they remain unrepresented despite service and the order proposed to be passed will not cause infringement to the rights of the private respondent, if any.

The core issue, which is required to be adjudicated in this matter, is whether the land alleged to have been encroached upon by the private respondents is Government land belonging to PWD. Only after it is found that the land allegedly encroached upon is a Government land, the question of subsequent steps in terms of the provisions of the said Act of 1964 will follow. The Assistant Engineer is the Competent Authority under the said Act to look into the issue of encroachment upon State highways. In the event the land alleged to be encroached upon is a Government land and forms part of the State highway, the matter has to be further proceeded with in accordance with law.

In these facts and circumstances, I direct the Assistant Engineer, Contai Highway Sub-Division, PWD (Road), Government of West Bengal, being the respondent no.4, to dispose of the petitioner's complaint dated 20<sup>th</sup> April, 2021 (at page 90 of the writ petition) within six

months from date in accordance with law after affording the parties, including the private respondents, a reasonable opportunity of hearing. The Assistant Engineer shall be entitled to take assistance of the concerned Block Land & Land Reforms Officer and other Government officials and shall consider the relevant records for the purpose of ascertaining whether the land alleged to have been encroached is a Government land and whether there is encroachment at all upon Government land forming part of the State highway. The Assistant Engineer shall pass a reasoned order and communicate the same to the parties within seven days from the date of passing of the same.

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, in particular as to the encroachment over Government land said to have been made by the private respondents, are deemed to have not been admitted by the respondents.

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

**(Arindam Mukherjee, J.)**