

Court No.
8
Item No. 5
Ssi
01.10.
2021

WPA 14383 of 2021

Anandamargi Pracharak Sangha & anr.
-vs-
The State of W.B. & ors.

Mr. Soumen Dutta
Mr. Subhadeep Chatterjee
Mr. Sabyasachi Bhattacharjee

...for the petitioners

Mr. Amit Baran Dash

.....for the respondent nos. 6 & 7

The petitioner Anandamargi Primary School situated besides the public road i.e. Contai to Digha road claims that the private respondent, a club, is wanting to organize the Durgotsab on the side of the P.W.D. road by making an unauthorized construction in order to prevent the students of the school to cause difficulty for ingress and egress from the P.W.D. road to the school, as it is alleged that the construction has been done just in front of the school. Accordingly, the petitioner approached the respondent authorities by making representation on 24.08.2021 inviting their attention to invoke the provision of Section 10 of the West Bengal Highways Act, 1964 for demolition of the construction raised by the private respondents on the highway road known as Contai to

Digha road.

I have heard learned counsels for the petitioner. The contention so made on behalf of the petitioner is disputed by the learned counsel for the private respondent by inviting my attention to the averment made in paragraph 6 of the said application wherein it has been submitted that it is the P.W.D. road and not the highway and so the application is not maintainable for issuance of mandamus upon the respondent authority for removal of the construction. An order passed in WP No. 25175 (w) of 2017 dated 21st September, 2017 has been pressed in service to contend that learned counsel for the petitioner, Mr. Soumen Dutta, was learned advocate appearing for the private respondent who had sought for permission for holding the Durga Puja.

Be that as it may, when it is a P.W.D. road, it is obviously a public road and it is now declared as National Highway. The provision of Section 10 of the West Bengal Highways Act, 1964 is applicable according to the learned counsel for the private respondent. Since the matter relates to organizing Durga Puja during Puja days, it is perceived that construction whatever made has to be temporary in nature by erecting pandel. Therefore, it cannot be said that there has been a pucca construction or permanent construction being raised in absence of any evidence to the contrary. If the authority on inquiry finds

that the encroachment has been made on the public road by rising any pucca construction, then the respondent authority would remove such construction by invoking the provision under Section 10 of the West Bengal Highways Act, 1964 which reads thus:-

*“(1) If any person,-
 (a) is found to have made an encroachment on any road, street, path, way or land which is declared to be a highway under sub-section (1) of section 3, or
 (b) makes an encroachment on a highway in contravention of the provisions of section 8, or
 (c) docs. not remove an encroachment on the expiry or cancellation of any permit granted to him,
 the Highway Authority or any officer authorised by him in this behalf shall serve a notice on him requiring him to remove the encroachment and restore the highway to its original condition within the period specified in the notice.
 (2) If the encroachment is not removed within the time specified in the notice, the Highway Authority or the officer authorised under sub- section (1) may make an application to [1] [an Executive Magistrate], having jurisdiction over the area, not being the District Magistrate, for removal of the encroachment and delivery of possession of the land encroached upon to the Highway Authority or such officer.
 (3) Such Magistrate may, on receiving the application and after notice to the person responsible for the encroachment and on taking such evidence, if any, as he thinks fit, make an order authorising the authority or officer to recover possession and remove the encroachment in question and may, if necessary, direct the police to assist in the enforcement of the order.
 (4) If the person responsible for the encroachment is aggrieved by the order of the Magistrate made under sub-section (3) he may, within fifteen days from the dale of the Magistrates order, appeal to the District Magistrate. The District Magistrate shall, after hearing the parties, make an order affirming, modifying or setting aside the order made under sub-section (3).”*

Thus having taken into consideration the provision of law and the facts cited above that subject road is a

P.W.D. road declared as Highway, no person has the authority to raise any obstruction to such road and if the respondent authority finds on enquiry any encroachment thereon, such authority is empowered under Section 10 of the said Act to remove the obstruction.

With the above observations, the writ petition i.e. WPA 14383 of 2021 is disposed of with direction to the respondent authority to attend to the complaint made by the petitioner school after the Puja festival is over.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Shivakant Prasad, J.)