

MAT 1000 of 2021
With
CAN 1 of 2021
Renuka Bibi
Vs.
Amal Kumar Mondal & Ors.
(Through Video Conference)

Mr. Sandip Chakrabarty
Mr. Kaustav Das

... ... for the appellant

Mr. Atarup Banerjee
Mr. Mrityunjay Chatterjee
Mr. G.N. Imrohi
Ms. Saswati Adhikary

... ... for the respondent no. 1

Mr. Sirsanya Bandopadhyay
Mr. Arka Kumar Nag

... ... for the State

By this appeal the order of the learned Single Judge dated 02.09.2021 has been questioned by the appellant (respondent no. 7 in the writ petition) whereby learned Single Judge has directed the Block Land and Land Reforms Officer, Sagardighi Block, Murshidabad to demarcate the unauthorized construction on the government land made by the private respondents in the writ petition within seven days and further directed the Assistant Engineer, Raghunathganj Highway Sub-Division, Public Works Department to complete the demolition process within a period of one week thereafter.

The appellant has raised a grievance that the appellant is required to be given an opportunity of hearing in terms of the provisions of the Act before passing the order of demolition. He has also raised an issue that earlier when the order was passed by this Court in the year 2015 no opportunity of hearing was

given by the authorities and the provisions of the Act were not complied with.

Learned counsel for the respondent no. 1 (writ petitioner) as also the State respondent have referred to the order dated 09.02.2015 passed in WP 11423 (W) of 2013 and have submitted that in 2015 itself there was a direction by this Court to give an opportunity of hearing to the appellant and other interested parties and then embark upon to dispose of the representation. They have submitted at that stage the order of demolition was passed but for some reason demolition could not be done.

Having heard the learned counsel for the parties, we have noticed that in this writ appeal on 29.09.2021 the interim direction was issued to the following effect:

“Upon hearing the parties and considering the materials placed, at this stage this Court confines itself to consideration of the essential fact as to whether an opportunity of hearing was extended to the appellant in terms of the orders dated 9th February, 2015 and 30th July, 2015 (supra).

Accordingly, it is directed that the Assistant Engineer, Raghunathganj Highway Sub-Division, PWD directorate, District – Murshidabad/the Respondent No. 5 shall hear the appellant and the private respondent upon prior notice to both the parties. The Respondent No. 5 shall file his Report through learned State Counsel on next date.”

It is pointed out by learned counsel for the appellant that in pursuance to the above direction the competent authority has taken a decision to initiate the proceedings under section 10 of the West Bengal

Highways Act, 1964. He has produced a copy of the proceedings dated 09.11.2021 of the Assistant Engineer, Raghunathganj Highway Sub-Division, PW (Roads) Directorate.

Section 10(1) of the Act of 1964 reads as under:

“10. (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) does 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 [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 order.”

In terms of section 10(1) of the Act a notice is required to be served by the competent officer to the alleged encroacher and thereafter under section 10(2) an application is required to be made to the District Magistrate for removal of encroachment and in terms of section 10(3) the Magistrate after taking the evidence, if any, and after notice to the person responsible for the alleged encroachment can pass an order authorising the authority to remove possession or remove the encroachment in question.

The proceedings dated 09.11.2021 of the Assistant Engineer clearly stated that he will take necessary action to invoke section 10(1) of the Act.

Nothing has been pointed to show that at the earlier stage the proceedings were taken under section 10 of the Act and by following the procedure prescribed therein an order was passed in terms of section 10(3) of the Act.

In view of the above, we are of the opinion that the learned Single Judge ought to have considered the provisions of section 10 of the Act and the plea in respect of non-compliance of the said provisions. Hence, we allow the appeal and direct the competent authorities to conclude the proceedings in terms of section 10 of the Act as expeditiously as possible, preferably within a period of two months from today. The earlier report, etc. can duly be considered now in the fresh proceedings in accordance with law.

The appeal being MAT 1000 of 2021 along with
CAN 1 of 2021 are accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)