

23
07.12.2021
Ct. No.10
b.das

W.P.A. 17139 of 2021

(Via Video Conference)

Motiur Rahaman Sekh
Vs.
State of W.B. & Ors.

Mr. Chittapriya Ghosh
Ms. P. Saha
...for the petitioner.

Mr. Chandi Charan De
Mr. Somnath Mukherjee ...for the State.

Md. Sarwar Jahan
Mr. Moidul Islam Kayal ...for the private respondent.

Affidavit of service filed on behalf of the petitioners be
taken on record.

Heard learned counsels for the parties.

It is submitted on behalf of the petitioner that
proceeding under Section 10 of the West Bengal Highways
Act, 1964 was initiated against the petitioner holding him
to be an encroacher in respect of a portion of the public
highway and notice in terms of Section 10(3) of the Act of
1964 was issued upon the petitioner on 23rd August, 2021.

Upon hearing the petitioner and considering the
submissions made by him, the Sub-Divisional Magistrate,
Sadar, Nadia by an order dated 16th September, 2021,
observed that the petitioner and another are encroachers of

the highway and the petitioner was directed to remove all sorts of unauthorized encroachment and restore the highway to its original condition within the period of 15 days from the date of the order.

Admittedly, no appeal was preferred by the petitioner against the said order within the stipulated period of time. The petitioner seeks liberty to prefer appeal against the said order of the Sub-Divisional Magistrate.

Upon consideration of the submissions made on behalf of the parties, this Court is of the view that as the petitioner has failed and neglected to prefer an appeal against the order impugned, he may be granted liberty to prefer such appeal before the District Magistrate so that the petitioner is not left remediless.

Accordingly, the petitioner is at liberty to prefer an appeal under Section 10(4) of the Act of 1964 before the District Magistrate within a week from date. The District Magistrate shall consider the delay in filing the appeal prior to considering the appeal on merits.

Such appeal, if admitted, be disposed of on merits within a period of two months from the date of filing of the appeal.

With the above observations and directions this writ petition WPA 17139 of 2021 is disposed of.

However, there shall be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)