

28/06/2021
Item No.3
Court No.8.
S. DE

Through Video Conference

W.P.A. 16204 of 2019

Kader Sardar. & Ors.

Versus

The State of West Bengal & Ors.

Mr. Atarup Banerjee
Mr. Mrityunjoy Chatterjee
Md. Golam Nure Imrohi ...for the petitioners.

Mr. Chandi Charan De, Ld. Addl. Govt. Pleader,
Mr. Anirban Sarkar,
...for the State.

Mr. Uday Narayan Betal
...for the respondent nos.6 to 8.

The petitioners are the recorded owners of about 64 decimals of land under Plot and L.R. 857 and L.R. Khatian No.3232, 3234, 3235 and 3237 collectively (Kri), J.L. No.072 and they cultivate the said plot of land. Precisely, the contention is that by the side of the land, house of the petitioners is situated and there is a PWD road, named Bhatsala to Kushabaria. In front of the said land and house of the petitioners, on the side of the PWD road, the private respondents have constructed a pucca dwelling house, as a result ingress and egress to and from the land of the petitioners is obstructed. As such, the petitioners are not in a position to cultivate their plot of land in

question. On 24.07.2019 the petitioners made a representation before the Executive Engineer, PWD, Berhampore. Thereafter, on 29.07.2019, one inspection was held and a direction was given to the Assistant Engineer, PWD, Berhampore Sub-Division No. III, Murshidabad by the Executive Engineer, PWD, Berhampore Division No.II to hold enquiry in respect of the facts stated by the petitioners in their complaint and to make necessary arrangement for removal of the unauthorized structure as per rule under West Bengal Highway Act, 1964.

Learned advocate for the petitioners points out that as per provision of Section 10 of said Act, nobody has any right to make construction on the side of the PWD road and in that view of the matter even if any person if authorizedly constructed any structure in the side of the PWD road, the Highway Authority has the right to remove such unauthorized construction from the side of the PWD road.

The petitioners complained that the Highway Authorities can remove such encroachment if found to have been made on any road, street, park or land declared to be the Highway under Sub-section 1 of Section 3 or makes an encroachment on the highway in contravention of the provisions of Section 8 or does not remove an encroachment on the expiry or cancellation of any permit granted to him. The

Highway authority or any officer authorized by him or does not remove an encroachment on the expiry or cancellation of any permit granted to him, the Highway Authority or any officer authorized by him after serving a notice, on the person who has encroached on the land, require the person to remove the encroachment and restore the highway to its original condition within a specified period of the notice. Such provisions are incorporated in the provisions of Section 10 of the Highway Act, 1964.

Despite direction given to the Assistant Engineer, PWD roads, the steps has not been taken and for that being aggrieved, the petitioners have invoked the writ jurisdiction of this Hon'ble Court for a direction upon the Assistant Engineer, PWD roads to pass a reasoned order on the basis of the representation of the petitioners being Annexure-P4 to the writ petition for removal of the unauthorized construction as per the provision of the Highway Act, 1964 from the date of the order.

In rebuttal, learned counsel for the private respondent nos. 6 to 8 submits that enquiry has been made and report submitted to the effect that the land, in question, does not fall within the purview of the encroachment to be removed by the petitioners.

Mr. Dey, learned counsel for the State-respondents pressed in service a photocopy of the

report dated 24.09.2019 submitted by the Revenue Inspector addressed to the B.L. & L.R.O. and submits that the matter be enquired but the report is not conclusive.

Having regard to the provision of Section 10 of the said Act, 1964 and in consideration of the representation made by the petitioners to the Executive Engineer and the order thereafter passed by the Executive Engineer directing the Assistant Engineer to hold enquiry of the facts and make arrangement for removal of unauthorized structure as per the rule of West Bengal Highway Act 1964, this Court finds that though such order was passed on 29.07.2019, but the Assistant Engineer has not carried out the direction of the Executive Engineer. This Court is of the view that due to the Pandemic situation which cropped up since March 2020, the authority may not be in a position to complete the steps to be taken for removing the unauthorized structure.

A Co-ordinate Bench of this Hon'ble Court by an order dated 29.07.2019 directed the respondents to give an opportunity to the respondent no.5 to take assistance of the respondent no.3 and the respondent no.3 was directed to co-operate the respondent no.5 in implementing the order. But the order has not yet been complied with.

Now, the writ application is disposed of with a direction to the State respondents to consider the representation made by the petitioners and upon enquiry, to pass a reasoned order within a period of one month from the date of hearing and then communicate a copy of the reasoned order to the petitioners within a week thereafter.

The B.L. & L.R.O., respondent no.3 would submit his conclusive report in respect of the land in question and submit a report directly to the assistant Engineer who will, accordingly, carry out the order of the Executive Engineer in the matter of removal of unauthorized structure if so found, upon giving an opportunity of hearing to all the parties concerned.

With the above directions, W.P.A. 16204 of 2019 is disposed of.

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

[Shivakant Prasad, J.]