

22.12.2021
Item No.1
Crt. No.11.
KB

**MAT 1272 of 2021
with
IA No. CAN 1 of 2021**

**Sri Srikanta Barik & Ors.
Vs.
Murari Bhuniya and others
(Via Video Conference)**

Mr. Binoy Kumar Das
Mr. Jagadish Ch. Das
... For the appellants

Mr. Subhabrata Datta
Mr. Sanatan Panja
... For the State-respondents.

Counsel for the appellant has filed Supplementary Affidavit enclosing the notice dt. 08.12.2021 issued by the Assistant Engineer be kept on record.

This is an appeal against the order passed by the Hon'ble Single Judge in W.P.A.13517 of 2021 dated 14th September, 2021 wherein the Hon'ble Single Judge has passed the following order:

“Having heard the learned Counsels for the parties and considering the material on record, I dispose of the writ-petition with a direction upon the respondent no.5 to consider and dispose of the application filed by the petitioner on July 28, 2021 after affording an opportunity of hearing to all the affected

parties including the petitioner within a period three months from the date of communication of this order, if accordance with law.

*The writ-petition being **WPA 13517 of 2021** is accordingly **disposed of.***”

During the pendency of the appeal, the Assistant Engineer, Contai Highway Sub-Division, P.W.D. (Roads) Directorate had issued a Memo No.1081/8 dated 08.12.2021 directing the appellants to remove/demolish/abate such structure/obstructions on or before 24.12.2021.

The Hon’ble Single Judge while disposing of the writ application had directed the Assistant Engineer to consider and dispose of the application filed by the petitioner dt.28.07.2021 after affording an opportunity of hearing to all affected parties.

From the notice issued by the Assistant Engineer, it is found that the Assistant Engineer had violated the principle of natural justice by not giving an opportunity of hearing to the petitioner and other affected parties as directed by the Hon’ble Single Bench.

This Court finds that the Assistant Engineer had not complied with the provisions of Section 10(1) of the West Bengal Highways Act, 1964.

Thus this Court is of the view that the notice issued by the Assistant Engineer dated 08.12.2021 is liable to be set aside and accordingly set aside.

The Assistant Engineer, Contai Highway Sub Division is directed to comply with the order passed by the Hon'ble Single Judge by following the due process of law strictly in terms of Section 10(1) of the West Bengal Highways Act, 1964 by giving an opportunity to all the parties.

Since affidavits are not called for, allegations made in the appeal are deemed to be denied and disputed.

With the aforesaid observations, the appeal and the connected application are disposed of.

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

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

(Krishna Rao, J.)

(Subrata Talukdar, J.)