

AD. 8.
February 25, 2021.
MNS.

W. P. A. 22247 of 2019
(**Via video conference**)

Sri Bijoy Krishna Nanda
Vs.
The State of West Bengal and others

Mr. Bharat Chandra Simai

... for the petitioner.

Mr. Ashim Kumar Ganguly,
Mr. Bellal Shaikh

...for the respondent-authorities.

Affidavit-of-service filed in Court today be
taken on record.

Despite service, none appears on behalf of
the private respondent, although the petitioner
and the respondent-authorities are represented
through counsel.

On the complaint of the petitioner, the Sub-
Divisional Magistrate, Egra, District- Purba
Medinipur, had, vide order dated August 26,
2016, directed encroachment on Government
land by the private respondent to be removed by
the Assistant Engineer, PWD(R), Contai Sub-
Division, within seven days therefrom positively
with the help of the police authorities. The cost of
such removal might be recovered from the

unauthorised occupants in terms of Section 10 of the Highways Act, 1964.

However, by a subsequent order dated December 27, 2016, the District Magistrate, Purba Medinipur, set aside such order and granted *status quo* to be maintained on the same plot of land. In the same breath, however, the Magistrate observed that if the PWD (Roads) Department so requires, the structures would be demolished immediately.

The premise of the order of the District Magistrate, which is under challenge in the present writ petition, was apparently that respondent no. 7, the Pradhan of the Gopalpur Gram Panchayat, had stated that a temporary market was held twice a week on such land, for which a dustbin had been installed over a portion of PWD-acquired property for public use and a public latrine and a waiting room for the common people had also been constructed there.

Upon hearing both sides, it is apparent on the face of the impugned order that the same was self-contradictory. In the same breath, the District Magistrate directed *status quo* to be maintained and also permitted the PWD to demolish the structures immediately if the PWD “so requires”.

That apart, in view of the admitted position that the alleged dustbin, latrine and waiting room were constructed on PWD property, such constructions are palpably illegal as well and tantamount to encroachment within the purview of the Highways Act, 1964.

There was no rhyme or reason behind setting aside the order of the Sub-Divisional Magistrate, Egra, which was in the same tune as that of the District Magistrate, both having directed the PWD to demolish the illegal structures and remove the encroachment. Thus, the impugned order does not stand judicial scrutiny.

Accordingly, W. P. A. 22247 of 2019 is allowed, thereby setting aside order No. 2 dated December 27, 2016 passed in Appeal No. 10 of 2016 by the District Magistrate, Purba Medinipur (Annexure P6 at page 26 of the writ petition) and restoring the order dated August 26, 2016, passed by the Sub-Divisional Magistrate, Egra, directing the Assistant Engineer of the PWS(Roads), Contai Sub-Division to remove the unauthorised structures and encroachment from the property-in-question, the costs of which may

be recovered from the unauthorised occupants in terms of Section 10 of the Highways Act, 1964.

Such encroachment shall now be removed within a period of a fortnight from date. In the event the Assistant Engineer has a threat perception for removing such encroachment and structures, the Assistant Engineer will be free to approach the local police authorities, who shall give adequate police assistance to the said Assistant Engineer for the purpose of such removal.

There will be no order as to costs.

The parties are directed to act on the communication of learned advocates of the parties and/or server copy of this order, without insisting upon prior production of certified copy of this order.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(Sabyasachi Bhattacharyya, J.)