

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Through Video Conference)

WPA 9721 of 2020

Uttam Kumar Maity
Vs.
The State of West Bengal & Ors.

Mr. Salil Kumar Maiti
Ms. Pinki Saha
... For the petitioner

Mr. Sirsanya Bandopadhyay
Mr. Arka Kumar Nag
... For the State

Mr. S.P. Pahari
Mr. A. Pradhan
Mr. T.K. Mahapatra
... For the respondent no.9

The petitioner claims to be the owner of LR Plot Nos.528 and 529, Mouza – Kapasarea, JL No.135 adjacent to Mahishadal-Nandigram State Highway. The petitioner complains of encroachment of PWD land in between the Highway and the petitioner's plot by the respondent no.9 thereby causing hindrance to free ingress and egress. The petitioner has made a complaint on 29th September, 2020 to the Executive Engineer (PWD), Tamluk Division and several others, including the Assistant Engineer (PWD), the Sub-Divisional Officer, Haldia, the Block Land and Land Reforms Officer, Mahishadal (in short "BL & LRO"), as also to the Officer-in-Charge, Mahishadal Police Station. The petitioner says that none of the authorities have taken any steps in terms of the petitioner's complaint though the

alleged encroachment has caused hindrance to the petitioner's ingress and egress.

On behalf of the respondent no.9 (private respondent), it is submitted that there is no encroachment. The land alleged to have been encroached upon is also not PWD land as the same is not notified. The writ petition is, therefor, not maintainable.

On behalf of the State, it is submitted that no instructions have been received by the State regarding the pendency of the petitioner's application before the Executive Engineer in terms of the provisions of the West Bengal Highways Act, 1964.

Be that as it may, the moot question which requires to be adjudicated is whether the land alleged to have been encroached upon is a PWD land and whether there is at all any encroachment.

These two issues require factual appreciation which is not possible to be made by the writ Court. In any event, the West Bengal Highways Act, 1964 provides for a specific mechanism for redressal of any encroachment. The concerned Engineer not below the rank of Assistant Engineer is the authority to whom a complaint has been made. Admittedly, a complaint has been made to the Executive Engineer. The Executive Engineer PWD (Roads) Division, being the respondent no.2, is, therefor, required to bring the complaint to a logical conclusion.

The Executive Engineer PWD (Roads) Division, being the respondent no.2, in the facts and circumstances as aforesaid, is directed to dispose of the petitioner's complaint dated 29th September, 2020 (Annexure "P-4" at page 50 of the writ petition) within six months from date in accordance with law after affording the parties a reasonable opportunity of hearing. The Executive Engineer shall be free to take assistance of the concerned BL & LRO and other Government officials and records for the purpose of ascertaining whether the land alleged to have been encroached is a Government land and if so demarcation of the Government land, as may be necessary, for the purpose of hearing. The Executive Engineer shall pass a reasoned order and communicate the same to the parties within seven days from the date of passing of the same.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

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

(Arindam Mukherjee, J.)