

AD. 16.
January 22, 2021.
MNS.

W. P. A. 11979 of 2020
(**Via video conference**)

Kartik Kolay
Vs.
State of West Bengal and others

Mr. Sudeep Sanyal,
Mr. Snehasis Jana,
Ms. Tutun Das

... for the petitioner.

Mr. Samrat Sen

...for the respondent-authorities.

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

The petitioner alleges that a notice was
given to the petitioner by the appropriate
authorities under Section 10 of the West Bengal
Highways Act, 1964, alleging that the petitioner
had encroached on PWD land. The notice, dated
December 24, 2020, contained an warning that in
the event of non-removal of alleged
encroachment, necessary action would be taken
up for removal of encroachment and the cost of
removal of such encroachment would be charged
upon the petitioner.

Since there is no provision for challenge
before any authority against such a notice at the

behest of the noticee, learned counsel submits that the petitioner was constrained to file the present writ petition.

The petitioner, it is argued, reasonably apprehends the demolition of his property, in view of the language used in the impugned notice.

Learned counsel for the petitioner further contends that no demarcation of the petitioner's property, as alleged in the impugned notice, was ever done.

Learned senior counsel appearing for the respondent-authorities places reliance on Section 10 of the 1964 Act and submits that the procedure for removal of encroachment has three tiers. At the first stage, a notice is given to the alleged encroacher.

In the event the encroachment is not removed, the Highways authority or its authorised officer may make an application to an Executive Magistrate having jurisdiction over the area, at the second stage, for removal of such encroachment and delivery of possession of the land encroached to the Highways authority or such officer.

At the third stage, the Magistrate may, on receiving the application and after notice to the

person responsible for the encroachment and on taking such evidence, if any, as he thinks fit, make an order authorising the authority or officer to recover possession and remove the encroachment-in-question, if necessary with police assistance.

Sub-section (4) of Section 10 of the 1964 Act provides for an appeal against the order of the Executive Magistrate to the District Magistrate, which entails further hearing of the parties.

It is, thus, submitted that there is no scope of demolition of the petitioner's property without the three-tier procedure being complied with.

There is justification behind the submissions of the respondent-authorities, inasmuch as it is mandatory for the three-tier procedure, as envisaged in Section 10 of the 1964 Act, to be complied with before a final decision is taken for removal of encroachment. Even thereafter, the remedy of an appeal is available to the parties against the order of the Executive Magistrate.

Whatever language might have been used in the impugned notice, the same is in consonance with the words used in Section 10 of

the 1964 Act by the Legislature in its wisdom. As such, there cannot be any apprehension, at this stage, of demolition of the petitioner's property without due process of law being followed.

Hence, the writ petition is premature in nature.

Accordingly, W. P. A. 11979 of 2020 is dismissed without any order as to costs.

However, the petitioner shall be at liberty to approach the appropriate authority in case the petitioner has a grievance against the ultimate decision taken on the removal of the petitioner's structure.

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

(Sabyasachi Bhattacharyya, J.)

