

27.01.2022.
Court No.13
Item No. 33
ap

**W.P.A. No. 1333 of 2022
(Through Video Conference)**

**Ajoy Mandal & Ors.
Versus
The State of West Bengal & Ors.**

Mr. Anindya Lahiri,
Mr. Suchindram Bhattacharjee.
...For the petitioners.

Mr. Amitesh Banerjee, Id. Sr. Standing Counsel,
Mr. Susovan Sengupta,
Mr. Subir Pal.
...For the State.

The writ petition has been filed challenging the order dated 19th January, 2022 passed by the District Magistrate, South 24 Parganas.

By the impugned order, an appeal under Section 10(4) of the West Bengal Highways Act, 1964, directed against the order dated 17th December, 2021 passed by the Sub-Divisional Magistrate, Kakdwip, that was the subject matter of W.P.A. No. 11608 of 2020 was dismissed.

Counsel for the petitioners having obtained leave from this Court to move this matter, would urge two points in this writ petition, challenging the impugned order.

The first point urged is that the District Magistrate, South 24 Parganas had relied upon an enquiry report dated 18th January, 2022 of the Block Land & Land Revenue Officer, Sagar, South 24

Parganas. It is submitted that the said report was not furnished to the writ petitioners.

The second ground is that a large number of other illegal and unauthorized construction made on public land in the vicinity, has not been addressed by the District Magistrate, South 24 Parganas or the Sub-Divisional Magistrate, Kakdwip.

Having heard the Counsel for the petitioners and the Counsel for the State and going through the report of the District Magistrate, this Court is of the view that non-supply of report dated 18th January, 2022 has not been prejudiced the petitioners. The enquiry report which is made part of the writ petition, as supplied to the petitioners along with the impugned order only contained a list of dag numbers which the Block Land & Land Revenue Officer, Sagar found belonged to the State and/or the PWD.

The petitioners have not been able to demonstrate despite repeated enquiries from this Court as to how or why, prior supply of enquiry report to the writ petitioners would have in any way made any difference to the final order. Admittedly the lands on which the petitioners have their establishments belong to the State/PWD.

In the instant case, therefore, non-supply of enquiry report cannot in any way prejudice the petitioner applying the principles laid down in the

decision of the Hon'ble Supreme Court of India in the case of ***State Bank of Patiala – Vs. – S.K. Sharma*** reported in ***(1996) 3 SCC 364***.

The second point urged is that the other unauthorized construction have not been ordered to be removed along with the petitioners, does not inspire any confidence.

It is not the case of the petitioners that any of the land on which unauthorized construction has been effected by his clients in fact belonged to him. It is also not demonstrated as to how the petitioners would be prejudiced or benefitted, if other unauthorized construction is not directed to be demolished along with that of the petitioners. The petitioners cannot claim negative equality.

For the reasons stated above, the instant writ petition is misconceived and is hereby dismissed. The impugned order shall be executed in its entirety.

It is absolutely made clear that the Authority under the West Bengal Highways Act, 1964 shall undertake demolition and/or removal to address all other unauthorized construction in the vicinity, inter alia, on the L.R. Dag Nos.4063, 4064, 4065, 4080, 4180, 4179 and 4199 and those mentioned in the impugned order itself, in accordance with the procedure prescribed under the West Bengal State Highways Act, 1964.

There will be no order as to costs.

The learned Counsel for the petitioners prays for stay of operation of this order.

Prayer of stay is considered very carefully and refused.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)