

D/L
Item No. 20
09.11.2022
KOLE

MAT 302 of 2019
With
IA No. CAN 2 of 2019 (Old No. 2856 of 2019)
The District Magistrate, Hooghly District & Ors.
-Vs.-
Sri Ashis Kumar Dey & Ors.

Mr. Susovan Sengupta,
Mr. Subir Pal,

...for the appellants.

Mr. Kushal Chatterjee,
Mr. S. Mitra,
Mr. D. Ray,

...for the respondent no. 1 & 2.

By consent of the parties the appeal and the application are taken up for hearing together.

Two writ petitions were disposed of by the judgment and order dated January 11, 2018, which is the subject matter of challenge in the present appeal.

The writ petitioners are the owners of a plot of land which is adjacent to and behind a plot of PWD land which abuts a highway. It is not in dispute that the said PWD land is “highway” within the meaning of the West Bengal Highways Act, 1964. The State Government was putting up a construction on the said PWD land. The writ petitioners approached the learned Single Judge by filing WP No. 411 (W) of 2018 contending that the construction was being made without obtaining prior permission from the Highway Authority as required under Section 8 of the West Bengal Highways Act, 1964. The writ petitioners argued that ‘prior permission’ contemplated under the said provision of law, applied to one and all, without exception. Even a Department of the Government, before putting up a

construction on a highway or making any encroachment on a highway, must obtain prior permission of the Highway Authority. Further, the construction made was obstructing ingress to and egress from the land of the writ petitioners.

The subject matter of the second writ petition being WP No. 412 (W) of 2018 which was filed by the writ petitioners was a representation that they had made to the concerned Government Department seeking permission to construct a culvert over a Nayanjuli to have convenient access to their land. Since such representation was not being considered, the second writ petition was filed.

As aforestated, both the writ petitions were disposed of by the impugned judgment and order. WP No. 412 (W) of 2018 was disposed of by directing the concerned Authority to dispose of the representation of the writ petitioners by a reasoned order after giving an opportunity of hearing to the writ petitioners and after holding a physical joint inspection in the presence of the writ petitioners or their authorized representatives.

In so far as WP No. 411 (W) of 2018 was concerned, the learned Judge came to the conclusion that even the Government Department which had constructed structures on the PWD land which was governed by the West Bengal Highways Act, 1964, could not have done so without the prior approval or sanction of the Highway Authority as contemplated under the 1964 Act. The learned Judge passed the following direction which is reproduced hereinunder:-

“The construction made on the lands as in paragraph 2 of this judgment are, for the reasons summarized in paragraph 17 of this judgment read with the discussion contained in the paragraphs which precede it, without

jurisdiction and since they have been done at the instance of the officers of the State of West Bengal as admitted in the Affidavit-in-opposition and recorded by me at paragraph 13 of this judgment, the respondent no. 1 through its Block Development officer and also its secretary, Department of Panchayat and Rural Development, Government of West Bengal shall be responsible to demolish the construction and vacate the said lands within four weeks from the date of this order. Of course, if within such period the prior permission is granted by the Highway Authority this order shall not prevent the respondents from commencing construction afresh in accordance with law on the said lands.”

However, the learned Judge clarified that the Highway Authority could exercise its discretion in terms of Section 8(1) of the 1964 Act and permit the Government to make construction on the PWD land in question.

Being aggrieved, the State of West Bengal has come up in appeal.

We have heard learned Counsel for the parties. In principle, we agree with the learned Single Judge that nobody is above the law. Even the State Government has to act in accordance with law and in compliance with mandatory statutory requirements. The Department of Panchayat and Rural Development, Government of West Bengal, which was responsible for the impugned construction, could not have put up the construction without the prior permission of the Highway Authority. However, we are told that the concerned Department of the State Government has applied to the Highway Authority for permission to make construction on the concerned PWD land. The Highway Authority shall decide such application in accordance with law within four weeks from the date of

receipt of a copy of this order which shall be immediately supplied to the Authority by the parties.

Needless to say, if permission is denied by the Highway Authority, the impugned construction has to be removed by the concerned department of the State Government. Even if permission is granted by the Highway Authority and the construction stands regularized as a result thereof, the concerned Department of the State Government must provide a sufficiently wide passage for the writ petitioners to access the highway from their land which is behind the PWD land. Mr. Sengupta, learned Advocate for the State contends that a passage already exists which gives access to the writ petitioners to their land from the concerned highway. This is disputed by learned Advocate for the writ petitioners.

In so far as the representation of the writ petitioners which was the subject matter of WP No. 412 (W) of 2018 is concerned, the concerned authority before which the representation has been made, shall dispose of the representation by a reasoned order, in accordance with law, within a period of four weeks from the date of receipt of a copy of this order, after giving an opportunity of hearing to the writ petitioners or their authorized representative.

The impugned judgment and order is modified to the above extent. The appeal and the connected application are accordingly disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)