

MAT 478 of 2021

Northern Traders Welfare Association
Vs.
Sashanka Shekhar Sengupta @ Shankar & Ors.
(Through Video Conference)

Mr. Goutam Chakraborty
Mr. Goutam Kumar Bose
Mr. Ayan Basu
Mr. Kartik Kumar Ray

... ... for the appellant

Mr. Srijob Chakraborty
Mr. Sunny Nandy

... ... for the respondent no. 1

Mr. Susovan Sengupta
Mr. Subir Pal

... ... for the State

Mr. Bikash Kumar Chatterjee

... ... for the Panihati Municipality

The appellant is aggrieved with the order of the learned Single Judge dated 15.02.2021 passed in WPA 10047 of 2019 whereby the learned Single Judge taking note of the stand of the State in the affidavit-in-opposition has made certain observations and granted liberty to the State to take appropriate steps in accordance with law under the State Highways Act for removing alleged illegal encroachment.

The respondent no.1 herein had approached Writ Court with a prayer to remove the alleged encroachment and construction done by the appellant or any other person from the old Calcutta Road from Sodepur Railway Station to Rahara Bazar.

The submission of learned counsel for the appellant is that the writ petitioner had no locus to file the petition and that the appellant has not been heard

before the learned Single Judge and that the construction has been made on the State Highway is in dispute, therefore the order of the learned Single Judge cannot be sustained.

Submission of the learned counsel for the respondent no.1(writ petitioner) is that the proceedings in terms of Section 10(2) of the West Bengal Highways Act is now required to be taken up where the appellant will have the opportunity and that in terms of the affidavit-in-opposition filed by the State before the learned Single Judge there is already an averment that the encroachment exists.

Learned counsel for the State has referred to the Scheme of Section 10 of the State Act and has submitted that the appellant will have full opportunity in terms of Section 10(3) of the State Act before the Magistrate when the action is taken.

Submission of learned counsel for the Municipal Corporation is also that though the road is managed by the Municipal Corporation but it is a public road.

Having heard the learned counsel for the parties and perusal of the record it is noticed that the West Bengal Highways Act, 1964 (for short 'the State Act') in Section 2(bb) defines 'Government road' as also in Section 2(c) defines 'highway' where wider meaning to highway has been given.

Section 10 of the State Act provides for removal of encroachment on any road, street, path, way or land which is declared to be a highway under Section 3(1) and reads as under:

“10.(1) If any person,-

- (a) is found to have made an encroachment on any road, street, path, way or land which is declared to be a highway under sub-section (1) of section 3, or
- (b) makes an encroachment on a highway in contravention of the provisions of section 8, or
- (c) does not remove an encroachment on the expiry or cancellation of any permit granted to him,

the Highway Authority or any officer authorised by him in this behalf shall serve a notice on him requiring him to remove the encroachment and restore the highway to its original condition within the period specified in the notice.

(2) If the encroachment is not removed within the time specified in the notice, the Highway Authority or the officer authorised under sub-section (1) may make an application to [an Executive Magistrate], having jurisdiction over the area, not being the District Magistrate, for removal of the encroachment and delivery of possession of the land encroached upon to the Highway Authority or such officer.

(3) Such 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 and may, if necessary, direct the police to assist in the enforcement of the order.

(4) If the person responsible for the encroachment is aggrieved by the order of the Magistrate made under sub-section (3) he

may, within fifteen days from the date of the Magistrate's order, appeal to the District Magistrate. The District Magistrate shall, after hearing the parties, make an order affirming, modifying or setting aside the order made under sub-section(3)."

Record further reflects that the writ petitioner(respondent no.1) had made a complaint dated 26.10.2018 in respect of the encroachment by the appellant.

Learned counsel for the State has fairly stated before this Court that on receiving the information in respect of the encroachment of the State Highways it is the responsibility of the authorities to take action. He has also fairly stated that before issuing any notice under Section 10(3) it would be appropriate to do demarcation in the presence of the appellant and the authorities of the Municipal Corporation so that prima facie it can be ascertained if there is any encroachment.

Scheme of the Section 10 of the State Act also reveals that if the concerned authority comes to a conclusion in respect of existence of any encroachment of road, street, path, way or land which is declared to be highway then a notice in terms of Section 10(3) is required to be served.

It is not in dispute that till now the said exercise has not been completed and no notice in terms of Section 10(3) has been issued.

Since there is an allegation/complaint of encroachment on the State Highway by the appellant, therefore now the competent authority will carry out the joint inspection/demarcation in the presence of the appellant and competent authority of Municipal Corporation and if in terms of Section 10(1) it is found that the encroachment exists then the proceedings as required by Section 10 will be initiated.

Needless to say, in terms of Section 10(3) of the Act the appellant will have full opportunity before any action or removal of encroachment is taken.

Since the aforesaid exercise is yet to be done, therefore any observations made by the learned Single Judge will not come in the way of action under Section 10 of the Act and while taking the action under Section 10 it will be open to the appellant to raise the objection that the land in question is not covered within the definition of “Government land” or “highway” which on being so raised will be duly decided by the competent authority without being influenced by any observation made in the order or order of learned Single Judge.

The appeal is accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)