

WPA 12165 of 2022

Sukdeb Bera
Vs.
The State of West Bengal & Ors.

Mr. Partha Pratim Roy,
Mr. Salil Kumar Maiti,
Ms. Anima Maiti,

...for the petitioner.

Mr. S.M. Hassan,
Mr. Rejaul Alam,
Ms. Anupama Yasmin,
Mr. Saikat Mandal,

...for the Municipality.

Mr. Chandi Charan De,
Mr. Anirban Sarkar,

...for the State.

The petitioner is aggrieved by the observation made by the District Magistrate, Purba Medinipur in the order dated 25th May, 2022 directing enquiry of the plot in question.

The relevant portion of the said order is set out hereinbelow:

“In such circumstances Block Land & Land Reforms Officer, Sutamata is directed to make an enquiry and to submit a report as to whether there is substantial space on Plot No. 751/1452 Mouza-Sutamata, JL No 88 in front of raiyat plot No 751 and 752, for ingress and egress of the private respondent and to submit report issuing notice to all concerned parties within 15 days from receipt of this order”.

It is submitted on behalf of the petitioner as well as the State respondents that the proceedings under Section 10 of the West Bengal Highways Act, 1964 was initiated by the concerned authority in terms of an order passed by a

coordinate Bench of this Court in WPA 22242 of 2019 on 15th February, 2021. The said order indicates that since encroachment was made on State Highways maintained by the PWD of the State of West Bengal, the Executive Engineer, Tamluk Highway Division, PWD (Road) Government of West Bengal was directed to initiate proceedings under Section 10(1) of the Act of 1964 for removal of the impugned encroachment. The said order was carried in appeal by the Haldia Municipality and by an order passed on 10th December, 2021 in MAT 622 of 2021 an Hon'ble Division Bench affirmed the order of the coordinate Bench of this Court with an observation that admittedly the municipality had made construction over the land of the PWD without the permission of the PWD and the said illegal construction was restraining the ingress and egress of the petitioner, the report of the Special Officer supporting such contention of the petitioner and the PWD.

Section 10 of the Act of 1964 deals with the removal of encroachment on a Government Highway. Section 10(4) of the Act entitles the person responsible for such encroachment and aggrieved by an order under Section 10(3) to prefer an appeal before the District Magistrate who may, after hearing the parties, make an order affirming, modifying or setting aside the order made under sub-section (3). There is no provision in the Act of 1964 to deal with the fact of alleged obstruction of ingress and egress of

the petitioner by the private respondent. The only issue under consideration ought to be illegal encroachment of Government land/Highway.

In view of the above, this Court is inclined to hold that the direction for an enquiry and report by the Block Land & Land Reforms Officer, Sutamata as to whether there is substantial space on plot no. 751/1452 in front of the *raiyati* plot nos. 751 and 752 for ingress and egress of the private respondent is de hors the provisions of Section 10 of the Act of 1964 and is required to be set aside/quashed. No such enquiry is called for under Section 10(4) of the Act. Any such enquiry, if already made, shall not be taken into consideration by the appellate authority in dealing with the appeal under Section 10(4) of the Act.

However, the appellate authority shall deal with the prayers of the private respondent/alleged encroacher in terms of Section 10(4) of the Act of 1964 and pass a reasoned and speaking order after affording reasonable opportunity of hearing to both the parties.

With the above observations and directions, WPA 12165 of 2022 is disposed of. There shall however, be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

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

(Suvra Ghosh, J.)