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04.01.2022
Ct. No.10
b.das

W.P.A. 14800 of 2021

(Via Video Conference)

Hrisikesh Nayak
Vs.
State of W.B. & Ors.

Mr. Kushal Chatterjee
Mr. S. K. Mal ...for the petitioner.

Mr. S. Sengupta
Mr. S. Pal ...for the State.

Heard learned counsels for the parties.

The contention of the writ petitioner is that he acquired right, title and interest in respect of a plot of land by virtue of purchase from the erstwhile owner and is occupying the same. The said plot is adjacent to government land.

One Malek Mallick filed a writ petition before this court under Article 226 of the Constitution of India, praying for a direction upon certain persons who allegedly encroached upon the PWD land, to remove such encroachment and by an order dated June 30, 2021, a co-ordinate Bench of this Court directed the Executive Engineer to consider the writ petitioner's representation and dispose of the same within a stipulated period of time.

The writ petitioner takes this Court to Annexure P-5 to the writ petition which demonstrates that upon demarcation, it was detected that portion of the PWD land was in unauthorized occupation of the some trespassers and notice under Section 10(1) of the West Bengal Highways Act, 1964 was served upon the said encroachers on 16th August, 2021 directing them to remove/demolish such obstruction.

Learned counsel for the petitioner submits that the said demarcation was in absence of the petitioner and no notice for the same has been served upon him. As the land of the petitioner is adjacent to the PWD land, the petitioner apprehends that while demarcating the government land, the land of the petitioner may also be encroached upon without service of notice upon the petitioner.

The petitioner prays for an order quashing/recalling the notice dated August 6, 2021 and for fresh demarcation of the land in his presence.

It is submitted on behalf of the State respondents that no notice under Section 10(1) of the Act of 1964 was served upon the petitioner the plot owned and occupied by the petitioner is not involved in the proceeding under Section 10 of the 1964 Act in any manner.

Admittedly, the roadside land belonging to the Public Works (Roads) Department, Government of West Bengal was demarcated in compliance with the direction of a co-ordinate Bench of this Court passed on June 30, 2021 in

WPA 10663 of 2021 and upon detection of encroachment of the said road by certain persons, notice under Section 10(1) of the Act of 1964 was served upon them on August 16, 2021. The petitioner's name does not appear as alleged encroacher in the said notice. Demarcation of the land is complete and proceeding under Section 10 of the 1964 Act has been initiated against the alleged encroachers.

The petitioner apprehends that while the government land is demarcated, his property may also be affected without serving any notice upon him. Such apprehension of the petitioner has too weak a leg to stand upon, as demarcation of the land has already been completed and Section 10 proceeding has been initiated. The land of the petitioner is admittedly not affected or encumbered. The notice not being served upon the petitioner, the petitioner is not entitled to challenge the said notice or pray for quashing/setting aside the same merely on an apprehension of his land being affected during demarcation.

In view of the above, the writ petition is liable to be dismissed.

Accordingly, the writ petition being WPA 14800 of 2021 is dismissed.

There shall be no order as to costs.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)