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W.P.A. 15493 of 2021
(Jaidul Mallick and Anr. vs. State of West Bengal & Ors.)

Md. Sabir Ahmed
Md. Kutubuddin
Mr. Subham Saha

... For the Petitioners

Mr. Susovan Sengupta
Mr. Subir Pal

... For the State

Mr. Lakshminath Bhattacharyya
... For the Respondent Nos.9-10

The notice under Section 10(1) of the West Bengal Highways Act, 1964 is under challenge in the present writ petition. It is submitted on behalf of the petitioners that pursuant to a case under Section 133 of the Code of Criminal Procedure filed by the 9th respondent against the first petitioner, the alleged illegal encroachment on the land in question was removed by the petitioners on 23rd February, 2018 as recorded in the compliance reports issued by the Assistant Engineer, Falta Highway Division on 26th February, 2018 and 29th October, 2018. The petitioners complain that though they have

removed the allegedly illegal construction on the P.W.D. road voluntarily, notice under Section 10(1) of the West Bengal Highways Act, 1964 has been issued to them by the Assistant Engineer on 31st August, 2021. The said Authorities are trying to demolish the structure raised in the petitioners' own land in the garb of the said notice. The petitioners have prayed for cancellation of notice under Section 10(1) of the Act of 1964.

Per contra, learned counsel for the private respondents submits that there were encroachments by the petitioners on three plots of land out of which only plot No. 994 has been freed from encroachment. The other plots are still continuing to be encroached upon by the petitioners illegally. Learned counsel further submits that the writ petition is premature as the proceeding under Section 10 of the Act of 1964 is in progress and only a notice under Section 10(1) of the said Act has been issued pursuant to an order of a co-ordinate Bench of this Court.

Learned counsel for the State respondents submits that the State has no authority to cause demolition of any structure on the anvil of a notice under

Section 10(1) of the Act of 1964 and the proceeding should be concluded in terms of Sections 10(2) and 10(3) of the Act of 1964.

It appears from the letters issued by the Assistant Engineer on 26th February, 2018 and 29th October, 2018 that the encroachment on Dag No. 994 was removed. In a writ petition filed by the private respondents in this Court, a co-ordinate Bench of this Court, by an order dated 12th August, 2021 in W.P.A. 11541 of 2020 directed the Authority to conclude the proceeding initiated under the West Bengal Highways Act, 1964 in accordance with law and by removing the remaining illegal unlawful construction, if any. Pursuant to such order, the notice impugned dated 31st August, 2021 was issued.

In my considered view, since proceeding under Section 10 of the Act of 1964 has been initiated by issuance of notice under Section 10(1), such proceeding should be taken to its logical conclusion by the 7th respondent within a period of three months from the date of communication of this order, after giving reasonable opportunity of hearing to all the affected parties including the petitioners and the private respondents, in accordance with law. However, as the petitioners submit

that the entire encroachment has been removed from the P.W.D. land, which is controverted by the private respondents, the Authorities are at liberty to verify the same by way of physical inspection of the property in question in accordance with law.

It is needless to mention that the Authority shall take no steps for removal of the alleged encroachment/unauthorised construction, if any, pertaining to the proceeding under Section 10 of the Act of 1964 till conclusion of the proceeding.

With the aforesaid directions and observations, W.P.A. 15493 of 2021 is disposed of.

There shall be no order as to costs.

Since no affidavit has been invited, allegations contained in the writ petition shall be deemed not to have been admitted.

Urgent certified website copy of the order, if applied for, be given to the parties on compliance of requisite formalities.

(Suvra Ghosh, J.)