

07
19.07.2022
Ct. No.10
b.das

WPA 15592 of 2022

Tapas Kumar Panda & Ors.
Vs.
The State of W.B. & Ors.

Mr. Ashim Kr. Routh
Ms. A. Mondal
Ms. M. Dhar ...for the petitioners.

Mr. Chandi Charan De
Mr. Somnath Mukherjee ...for the State.

Mr. Kapil Ch. Sahoo ...for the respondent No.7.

Affidavit of service filed on behalf of the petitioners is taken on record.

Heard learned counsels for the parties.

The petitioners claim to be recorded owners of 3 decimals of land in Plot No.99/985, Khatian No.131, Mouza- Dakshin Charaikhiya, P. S. Contai in the district of Purba Midnapore.

In an earlier writ petition being C.O. No.14413 (W) of 1992 filed by the predecessor-in-interest of the private respondent and another, a co-ordinate Bench of this court, by an order dated 31st August, 1992 directed the authority concerned to consider and dispose of Annexure "C" to the writ application in accordance with law after hearing the petitioner and taking into consideration the documents and papers produced before it.

In compliance with the said order, the Executive Engineer-I, PWD Midnapore Division No.-II by an order dated 13th December, 1995 held that the predecessors-in-interest of the private respondent have sufficient passage for egress and ingress from/to their land.

It was further held that the question of removal of encroachment from the roadside PWD land would be dealt with by the Department after the policy for removal of the same was formulated by the Government of West Bengal. In other words, the question of alleged encroachment upon PWD land was not dealt with by the Executive Engineer in the said hearing.

The private respondent filed a writ petition before this Court alleging illegal encroachment of PWD land by the present petitioners and by an order dated 27th July, 2021 passed in WPA No.22751 of 2019, a co-ordinate Bench of this Court directed the concerned authority to act in accordance with law after giving a right of hearing to all the affected parties including the private respondent therein.

In terms of the said order, a joint physical enquiry and demarcation of PWD land in front of Plot No.99/985 were held and the petitioners were asked to produce all deeds and documents in support of their possession over PWD land in front of the plot owned by them. Notice under Section 10(1) of the West Bengal Highways Act, 1964 was issued upon the petitioners directing them to vacate the Government land unauthorisedly occupied by them by

constructing structures therein. The said notice was followed by a notice under Section 10(3) of the Act and finally an order under Section 10(3) was issued.

In the order passed under Section 10(3) of the Act by Sub-divisional Magistrate, Contai on 1st April, 2022, the Sub-divisional Magistrate directed the Assistant Engineer, PWD, Contai to remove unauthorised construction and recover possession of the plot in question. Such order was passed after affording reasonable opportunity of hearing to all the interested parties including the petitioners.

The petitioners prefer an appeal under Section 10(4) of the Act before the District Magistrate, Purba Midnapore and upon hearing all the parties, the appeal was rejected upon holding that the appellants have encroached upon Government land.

The Sub-divisional Magistrate, Contai was directed to take all necessary steps for removal of such encroachment. The said order is under challenge in the present writ petition.

Learned counsel for the petitioners has challenged the said order on three-fold grounds. Firstly, there is no obstruction to the egress and ingress of the private respondent as observed by the Executive Engineer in the order dated 13th September, 1995. Secondly, the entire exercise has been initiated at the instance of the private respondent and no policy of the Government for widening of the PWD road has surfaced. Thirdly, after a decision

taken by the Executive Engineer that there was sufficient way for egress and ingress of the private respondent, the Executive Engineer could not have initiated proceedings under Section 10 of the Act of 1964 subsequently.

According to learned counsel no demarcation was made in order to distinguish the PWD land from the land owned by the petitioners and the order impugned has been passed only on the basis of the report filed by the Block Land and Land Reforms Officer, which is not tenable in law.

Per contra, it is submitted on behalf of the respondents that in view of the acknowledgement of the appellants of encroaching upon Government land and having some unauthorised construction therein, the writ petition is devoid of any merit and is liable to be dismissed.

Further, Section 10 of the Act has no concern with the egress and ingress of any of the parties to their private land.

Section 10(1) of the Act of 1964 is reproduced below for the purpose of better appreciation of the case in hand:

*“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
 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 his 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.”*

The order passed by the Executive Magistrate on 13th September, 1995 deals with the question of egress and ingress of the private respondent and has clearly indicated that the question of removal of encroachment of the roadside PWD land shall be dealt with by the Government of West Bengal after policy for the same is formulated. In other words, the question of alleged encroachment on PWD land was not dealt with by the Executive Engineer in the said order.

A writ petition was filed by the private respondent before this Court alleging illegal encroachment of the PWD land and in compliance with the order passed by this Court, the concerned authority took steps for joint enquiry and demarcation of the plot in question. Upon detecting encroachment and unauthorised construction therein, the authority initiated proceedings under Section 10 of the Act of 1964.

Though the writ petition was filed by the private respondent, the proceeding was initiated at the behest of the concerned authority pursuant to the order of this Court.

The Act of 1964 deals with unauthorised encroachment upon PWD/Government land and has nothing to do with the dispute regarding ingress or egress of any private individual.

It appears from the order impugned dated 22nd June, 2022, that the appellants/writ petitioners acknowledged

that the Plot No.99/985 is government land and has been encroached by them by way of some unauthorised construction therein. The report of the Block Land and Land Reforms Officer has lent support to the admission made by the petitioners before the District Magistrate, Purba Midnapore. The appellate authority has dismissed the appeal upon hearing both the parties and considering the acknowledgement of the petitioners as well as all other relevant factors. The alleged encroachment has also been ascertained prior to passing such order.

The order impugned being a speaking and reasoned order and primarily based upon the admission made by the appellants, this Court does not find any illegality or irregularity therein which warrants intervention by this Court.

In view of the above, the writ petition being WPA 15592 of 2022 is dismissed.

However, there shall 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 supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)