

WPA 17415 of 2022

Asit Kumar Saha
Vs.
The State of West Bengal & Ors.

Mr. Kartick Kumar Bhattacharyya,
Mr. Subhash Chandra Dutta,
Ms. Soumashree Dutta,
...for the petitioners.
Mr. Tulsi Das Roy,
...for the respondent nos. 9 & 11.
Mr. Susovan Sengupta,
Mr. Sanatan Panja,
...for the State.

Affidavit of service filed by the petitioner is taken on record.

Heard learned counsels for the parties.

Pursuant to an order passed by this Court in WP 33117 (W) of 2014 on 20th January, 2015, directing the Executive Engineer-II to dispose of the representation submitted by the petitioner dated December 8, 2014 upon giving an opportunity of hearing to the petitioner and the private respondents, demarcation of the plot in question was made by the Block Land & Land Reforms Officer, Karimpur-I, Nadia and encroachment upon a portion of the said plot by the private respondents was detected. The Assistant Engineer, in exercise of power conferred under Section 10(1) of the West Bengal Highways Act, 1964 directed the said encroachers to remove the unauthorised structure in the plot in question and restore the land to its original condition within fifteen days from the date of

issuance of the notice. The said order was not complied with by the private respondents. By an order dated 17th May, 2022, the Sub Divisional Magistrate and Sub Division Officer, Tehatta observed as hereunder:

“Received a letter from Assistant Engineer, Plassey, Sub-Division, PWD, regarding removal of unauthorised encroachment of PWD’s LR Plot No. 1521 of Mauza-Uttampur, Jl. No. 88 P.S.-Karimpur, District-Nadia in PwD Land.

Hearing was held on 17.05.2022 at the Conference Hall (2nd floor) of the office of the Su-Divisional Officer, Pampa Saha on behalf of petitioner stated that the encroachers are obstructing the front portion of their property. The opposite parties stated that they are small businessmen having no way of enquiry livelihood except their shops. The report of the Block Land and Land Reforms Officer, Karimpur-I states that there is encroachment before the property of the petitioner. The Assistant Engineer (PWD) submitted that there is provision of ingress and egress for the petitioner. Hearing both the parties the matter is disposed of with an instruction upon both the parties to maintain status quo on the area and Inspector-in-Chrage, Karimpur P.S. to ensure no further encroachment takes place.

Let the copy of the Order be communicated to all concerned.

Sub-Divisional Magistrate
&

Sub-Divisional Officer, Tehatta,
Tehatta, Nadia”.

Strangely, though the Sub-Divisional Officer has held that there is encroachment before the property of the petitioner, he was of the view as there was provision for ingress and egress of the petitioner from his property and the private respondents/opposite parties were small businessmen who were eking out their livelihood from the shops situated in the encroached portion of the property, an order of status quo upon both the parties would suffice and the Inspector-in-Charge, Karimpur Police Station was directed to ensure that no further encroachment took place.

Such an order is unknown to law. In a proceeding under Section 10 of the Act of 1964, what is required to be ascertained is the alleged encroachment on the highway and whether the said encroachment obstructs egress and ingress of the petitioner is immaterial.

In such view of the matter, as encroachment made by the private respondents upon PWD road has been determined by the Sub-Divisional Officer, Tehatta, the said authority should be directed to take necessary steps for removal of such encroachment as expeditiously as possible, in accordance with law.

Accordingly, the writ petition being WPA 17415 of 2022 is disposed of directing the 8th respondent to take necessary steps for removal of the encroachment upon PWD land made by the private respondents and ensure

removal of such encroachment within two weeks from the date of communication of this order, in accordance with law.

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

There shall however, be no order as to costs.

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

(Suvra Ghosh, J.)