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jdt.

19.09.2022
jb.

W.P.A. 20821 of 2022
(CAN 1 of 2022)
(Chapal Bhattacharjee & Ors. vs. State of West Bengal & Ors.)

Mr. Soumen Kr. Dutta
Mr. Sabyasachi Bhattacharjee
.... For the Petitioners

Mr. L. M. Mahata
Mr. P. B. Mahata
.... For the State

Supplementary affidavit submitted on behalf of the petitioners and the report in the form of affidavit filed on behalf of the State respondents are taken on record.

The petitioners are aggrieved by the fact that though they are in possession of the plots in question, order under Section 10(3) of the West Bengal Highways Act, 1964 has been passed by the State respondents without serving any notice upon the petitioners and without giving an opportunity to the petitioners of being heard.

It appears from the report in the form of affidavit submitted by the State respondents that upon survey of the plots in question it is found that there are several

persons who have raised constructions including shop rooms and residential houses in the said plots.

Learned counsel for the State respondents candidly submits that the authority may be directed to issue fresh notice upon the petitioners as well as all other alleged encroachers of the said plots under Section 10(3) of the Act of 1964 and all the alleged encroachers be heard before passing any order under the Act.

Upon consideration of the submission made on behalf of the parties, this Court is of the view that since admittedly no notice under Section 10(1) or 10(3) of the West Bengal Highways Act, 1964 was served to the petitioners by the State authorities and no opportunity of hearing was granted to the petitioners prior to passing of the orders under Section 10(3) of the Act, the orders under Section 10(3) of the Act need to be set aside/quashed.

Accordingly, the orders passed on 5th July, 2021 and 31st August, 2022 by the Sub-Divisional Magistrate, Kharagpur, Sub-Divisional Officer, Kharagpur under Section 10(3) of the 1964 Act are set aside/quashed.

State respondents are directed to serve notice under Section 10(3) of the West Bengal Highways Act, 1964 upon the petitioners as well as all other alleged encroachers in the plot in question and pass a reasoned

order upon giving reasonable opportunity of hearing to all such alleged encroachers including the writ petitioners within three months from the date of communication of this order.

With the above observations and directions, W.P.A. 20821 of 2022 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.

CAN1 of 2022 is not in the file.

CAN 1 of 2022 is not pressed.

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

(Suvra Ghosh, J.)