

05 09.11.2022
tbsr Ct. 39

WPA 23138 of 2015

CAN 1 of 2018 (Old No: CAN 6619 of 2018) (not in file)

CAN 2 of 2018 (Old No: CAN 6620 of 2018) (not in file)

Jyotish Chandra Mondal

Vs.

State of West Bengal & Ors.

Mr. S. N. Arefin

Mr. Partha Chakraborty

.....for the petitioner

Mr. Chandi Charan Dey, Additional Govt. Pleader

Mr. P.B. Mahata

Mr. Anirban Sarkar

.....for the State

Mr. Udayan Chakravarty

Ms. Sanjukta Bhattacharya

.....for the respondent nos. 12 to 14

This is an application under Article 226 of the Constitution of India praying for direction, inter alia, commanding the respondent nos. 1 to 9 to take appropriate steps against 12th to 14th respondents for removal of the encroachment on government land in terms of Memo dated 24.09.2014.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is the owner/rayat in respect of land and his name is duly recorded in the government records. He is in actual physical possession of the said land. For the purpose of ingress and egress of the said land, the petitioner approached the respondent authority for construction of a slab culvert and the petitioner deposited annual

rental salami in order to utilize the road side land. The private respondents being the respondent nos. 12 to 14 are illegal encroachers of government land in the adjacent area. It would be difficult for building the culvert or, for that matter, for allowing free ingress and egress on and from the said land if the encroachment is not removed. Thereafter, the respondent authorities initiated action against the private respondents for removal of encroachment of public highway. Being aggrieved, the private respondents preferred a writ petition before this Court being WP No. 10452 (W) of 2012. By an order dated 17.05.2022 a Single Bench directed that the proceeding initiated against the petitioner under the West Bengal Highways Act, 1964 shall be taken to its logical conclusion and if an order for eviction was passed, the same should be implemented in accordance with law. Pursuant to the same and after considering the petitioner's representation, an order was passed on 12.07.2012 to remove the encroachment on or before 27.07.2012. In spite of such order, no steps were taken by the encroachers. Accordingly, by a memo dated 16.09.2013, the Sub-Divisional Officer, Baruipur, South 24 Parganas was directed to take steps under Section 10 of the West Bengal Highways Act to remove such encroachment. The encroachers preferred another

writ petition being WP No. 35576(W) of 2013 praying for setting aside the memo dated 16.09.2013. By an order dated 29.01.2014, a Single Bench of this Court held that the land in question was undoubtedly a public land and under the control of the State authorities; the private respondents illegally carried on business by encroaching the said land without lawful permission; trade licences issued by the concerned Panchayat did not amount to lawful permission for such purpose. This Court found no illegality in the said memo and dismissed the writ petition. Therefore, there is no impediment in going ahead with the process of removing the encroachers and granting the ultimate relief to the present petitioner. The earlier impasse regarding recording of the petitioner's name in the records have now been corrected.

Learned counsel appearing on behalf of the State submits as follows. The records in respect of the land in question have now been corrected. There is no impediment in going ahead with the proceeding under Section 10(3) of the West Bengal Highways Act.

Learned counsel appearing on behalf of the private respondents submits as follows. The rights of the private respondents in respect of the land in which they were carrying on business have not been taken into consideration. Removal of the private respondents

from the said land is not required to grant the ultimate relief of building a culvert over the said drain. There is enough space for both all.

I have heard the submissions of the learned counsels appearing on behalf of the parties and have perused the writ petition and affidavits filed.

At least on two previous occasions the matter had come up before this Court and on both the occasions this Court held in favour of the present petitioner.

A proceeding has already been commenced under Section 10 of the West Bengal Highways Act for removal of encroachment. Under sub Section (3) of the said provision, the private respondents would still get an opportunity of being heard.

Thus, without wasting any more time, the respondents should go ahead with the proceeding under Section 10 of the West Bengal Highways Act and conclude the same with a stipulated time.

Therefore, the respondent no. 9 is directed to conclude the proceeding under Section 10 of the West Bengal Highways Act at the earliest, positively within two months from the date of communication of this order after hearing the concerned parties including the private respondents.

With these observations, the writ application is disposed of.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)