

18.11.2022
rc/ct.no.10
Item No.01

WPA No. 25238 of 2022

Mr. Vivekananda Bose
Mr. Saibal Dasgupta
Mr. Ratikanta Pal ...for the Petitioner

Mr. Chandi Charan De
Mr. Anirban Sarkar ...for the State

Mr. Sarbananda Sanyal
Mr. Soumya Basu Roy Chowdhury
Mrs. Poulami Chakraborty
...for the respondent no.14

Affidavit of service filed in Court today is taken on record.

Heard learned counsels appearing on behalf of the parties.

The petitioner aggrieved by the order passed under Section 10(2) of the West Bengal Highways Act, 1964 (hereinafter referred to as "the Act of 1964") by the Executive Engineer, Assansol Highway Division P.W (Roads) Department on 19.09.2022 along with subsequent letter issued on 01.11.2022 seeking police assistance for removal of the encroachment allegedly made by the petitioner.

It is submitted on behalf of the petitioner that no such order can be executed under Section 10(2) of the Act of 1964 without taking recourse to Section 10(3) of the Act of 1964.

It is submitted by the learned counsel appearing on behalf of the State-respondents that the Sub-Divisional Officer, Burdwan Sadar, the 7th respondent herein may be directed to take recourse Section 10(3) of the Act of 1964 upon non-compliance of the order passed under Section 10(2) of the Act of 1964 by the petitioner.

Learned counsel appearing on behalf of the private respondent, in refuting the submission made by the learned counsel appearing on behalf of the petitioner as well as the State-respondents, has submitted that there is no provision for challenging an order under Section 10(2) of the Act of 1964 before the Writ Court since statutory appeal lies.

Pursuant to an order passed by this Court on 18.07.2022 in WPA No. 11227 of 2022 the present petitioner was called for hearing by the Executive Engineer, Assansol Highway Division and by an order passed on 19.09.2022, the Executive Engineer held that the portion of land lying in front of plot nos. 835 and 946 and the other plots being 944 and 1022 are recorded as the GTRoad and have been encroached upon by the petitioner. Pursuant to the said order the Assistant Engineer issued a letter to the Officer-in-Charge, Bud Bud Police Station on 1.11.2022 for rendering assistance for maintenance of law and order and demolition of the disputed structure.

Since the notice under Section 10(2) of the Act of 1964 has not been complied with by the petitioner and the State-respondents seek to take recourse to Section 10(3) of the Act of 1964 the letter issued by the Assistant Engineer on 01.11.2022 is required to be set aside.

Upon consideration of the submission made by the learned counsels appearing on behalf of the parties this Court is of the view that upon the matter being referred to the 7th respondent by the 11th respondent, the 7th respondent shall deal with the same under Section 10(3) of the Act of 1964 upon affording reasonable opportunity of hearing to all the interested parties including the petitioner and the private respondent within one month from the date of communication of this order, in accordance with law.

Pending disposal of the proceeding under Section 10 of the Act of 1964, no coercive action shall be taken by the State-respondents against the petitioner in respect of the plot in question.

The letter issued by the Assistant Engineer to the Officer-in-Charge, Bud Bud Police Station on 01.11.2022 is accordingly set aside/quashed.

With the above observations and directions this writ petition is disposed of.

There shall be, however, 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 furnished to the parties upon compliance of necessary formalities.

(Suvra Ghosh,J)