

03
01.05.2023
Ct. No.39
b.das

W.P.A. 2045 of 2023

Subrata Mantri & Anr.
Vs.
The State of W. B. & Ors.

Mr. Tanoy Chakraborty
Mr. Chhandak Dutta
Mr. Sourav Bera ...for the petitioners.

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

Mr. Raj Kumar Sain
...for the respondent Nos.7 & 8.

This an application under Article 226 of the Constitution of India praying for a direction upon the respondents to cancel and set aside the notices dated 29th December, 2022 and 2nd November, 2022.

During pendency of the writ petition, an impugned order has been passed under Section 10(3) of the West Bengal Highways Act, 1964 on 13th April, 2023. The petitioners are aggrieved with the order dated 13.04.2023 and the subsequent notice dated 26.04.2023, copies of which are taken on record.

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

Report filed on behalf of the State is also taken on record.

Learned counsel for the petitioners submits as follows. The petitioners were carrying on a business at the plot of land in question and was given a trade licence for such purpose by the Gram Panchayat. A notice was issued in terms of West Bengal Highways Act, 1964. Thereafter, the issue became the subject matter of a writ petition being WPA 6719 of 2022. By then, the notice dated 02.11.2022 has remain pending. In respect of that, this Court directed that the proceedings started should be taken to its logical conclusion. The first notice related to plot No.90/3195. However, that notice and the corresponding proceeding was actually not proceeded with. Instead a subsequent notice dated 29.12.2022 was issued where the plot No. was shown as 90/3196. It was claimed in the second notice that the illegal construction on the plot in question was in front of plot No.1160. From a map annexed to the writ petition it is amply clear that plot Nos.3195 and 3196 are anywhere near to plot no.1160. Besides, the order of the writ court was passed in respect of the first notice and the first proceeding. It was wrongly mentioned in the second notice that as if it was in pursuance of the writ court proceeding. The proceedings are in clear violation of principles of natural justice as proper opportunity of representation was not given as, amongst the other things, the notices were confusing and without jurisdiction. Although there is provision for appeal under sub-section 4 of Section 10 of the said Act, there is hardly any time for

preferring the same as it is learnt that eviction would take place by 3rd May, 2023. Besides, violation of principles of natural justice would enable the petitioners to move this application before the High Court. However, the petitioners can move an appeal if a protection is granted by this Court

Learned senior counsel representing the State relies on the report and submits as follows. As the prayer was defective, the second notice was given and that was also proceeded with on a report of the Block Land and Land Reforms Officer. Adequate opportunity of hearing was given. There is a provision for filing appeal against the impugned order under Section 10(4) of the West Bengal Highways Act, 1964.

As there is a provision for filing appeal, the petitioner shall be at liberty to file an appeal in accordance with law. Let such appeal be filed within 10 days from this date.

Till the time such appeal is disposed of, the respondent authorities are restrained from taking any steps for demolition of the purported illegal structure in pursuance of the impugned order.

As no affidavits were called for, the allegations are deemed not to have been admitted.

With these observations, this writ petition being WPA 2045 of 2023 is disposed of.

The parties shall act on a copy of the order obtained from the official website of this Court.

The petitioners shall be at liberty to communicate the gist of the order to the concerned authority forthwith.

(Jay Sengupta, J.)