

17.04.2023
Item no.10
Court No.6.
AB

**M.A.T. 282 of 2023
With
I A CAN 1 of 2023**

**Dipen Biswas & Others
Vs
Samarendra Nath Biswas & Others**

Mr. Tulsidas Roy,
Mr. Tirthankar Royfor the Appellants.

Mr. Partha Pratim Roy,
Mr. Ramchandra Guchhaitfor the State.

Mr. Rohit Mukherjee,
Mr. Nishant Chowdhury
.....for the Respondent No.1.

By consent of the parties, the appeal and the application are taken up for hearing together.

A judgment and order dated January 31, 2023, whereby the writ petition of the private respondents in this appeal being WPA 24830 of 2022 was disposed of, is under challenge in this appeal.

It appears that an earlier writ petition being W.P.No.33116(W) of 2014 was filed by the private respondents in this appeal, who were the writ petitioners before the learned Single Judge in this round of litigation, complaining that the present appellants being the private respondents in the present writ petition, had made unauthorized construction by encroaching upon a portion of PWD land. Consequently, the egress from and ingress to their property was obstructed. By an order dated

January 20, 2015, a learned Single Judge disposed of the writ petition directing the Executive Engineer-II, Nadia Division (Roads) to dispose of the representation submitted by the writ petitioners therein and make an enquiry as regards the genuineness of the grievances of the writ petitioners. The officer was also directed to grant an opportunity of hearing to the writ petitioners as well as the private respondents and in the event, the allegations of the writ petitioners were found to be correct, the officer was directed to take appropriate steps for removal of encroachment in compliance with the requirement of Section 10 of the West Bengal Highways Act, 1964.

Pursuant to the aforesaid order, due enquiry was held and the concerned officer found that the private respondents had encroached upon PWD road. Notice under Section 10(1) of the 1964 Act was issued to them directing them to remove the structures and restore the land to its original position.

However, by the final order dated March 21, 2022, passed by the Sub Divisional Officer, Tehatta, Nadia, disposing of the case, direction was given to maintain status quo on the land along with an observation that no further encroachment, permanent or otherwise, be made by anybody on such land. The order dated March 21, 2022 reads as follows:

“The petitioner and opposite party both were present. Perused the report of the Executive Engineer, PWD

(Nadia Division) and the report of the Inspector in Charge, Karimpur P.S.

As per the report of the Assistant Engineer, PWD, Plassey Sub Division and Block Land & Land Reforms Officer, Karimpur-I Block –

- 1) There is no problem in plying of vehicles and commuters due to the said encroachment.*
- 2) There is 10 feet wide road used by the applicant as passage and there is no problem faced by the petitioner for assessing to main road.*
- 3) There are around 100 (hundred) commercial establishment situated on the near vicinity of the PWD land so it will be an justified to dismantle only there construction and it will create resentment among the other encroachers.*

As per report of the Inspector in Charge, Karimpur P.S. there is every possibility of breach of peace if any dismantling takes place.

So the case is disposed of with an instruction to maintain status quo on the said land and no further encroachment permanent or otherwise will be made by anybody.

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

*Sd/-
Sub-Divisional Officer, Tehatta
Tehatta, Nadia”*

Challenging the aforesaid order, the private respondents in this appeal approached the learned Single Judge in the present round of litigation.

Before the learned Single Judge, the private respondents, who are the appellants herein, argued that since the Sub Divisional Officer has found that the ingress to and egress from the property of the writ petitioners were not obstructed, the question of removal of encroachment did not arise. The learned Judge rejected such contention and set aside the order

dated March 21, 2022, passed by the Sub Divisional Officer. The learned Judge directed the Sub Divisional Officer to carry on with the proceedings under Section 10 of the 1964 Act and take the same to its logical conclusion within two months from the date of communication of the order, after affording opportunity of hearing to all concerned parties. Being aggrieved, the private respondents in the writ petition are in appeal before us.

We have heard learned Counsel for the parties. The learned Judge rightly rejected the contention of the appellants herein that since it was found that the writ petitioners were in no way inconvenienced by the encroachment, such encroachment need not be removed. This proposition, to say the least, is preposterous. If there is any illegal encroachment on PWD land, the same has to be dealt with in accordance with the provisions of West Bengal Highways Act, 1964. This is what the learned Single Judge has directed. We find no infirmity in the order under appeal.

We affirm the order under appeal and direct the proceedings under Section 10 of the 1964 Act to be carried to its logical conclusion, after affording opportunity of hearing to all concerned parties including the present appellants. We however clarify that the concerned Authority shall conduct and conclude the proceedings under Section 10 of the

1964 Act without being influenced by any observation in the order of the learned Single Judge or in this order.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

M.A.T. 282 of 2023 is, accordingly, disposed of along with CAN 1 of 2023.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)