

March 02, 2023
ARDR
(257)

WPA 4582 of 2023

Pritam Gayen & ors.
Vs.
The State of West Bengal & ors.

Adv. Lakshminath Bhattacharya,
...for the petitioners.
Adv. Chandi Charan De,
Adv. Anirban Sarkar,
...for the State.

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

Heard learned counsels for the parties.

The notice issued upon the petitioners under Section 10(1) of the West Bengal Highways Act, 1964 is assailed in this writ petition.

It is submitted on behalf of the petitioners that the notice has not been issued under due process of law and is premature since the provision under Section 10(2) of the Act has not been invoked by the authority. No opportunity of hearing was granted to the petitioners prior to issuance of the notice.

It is submitted on behalf of the respondents that the notice has been issued pursuant to an order passed by a Hon'ble Division Bench presided over by the Hon'ble the Chief Justice in dealing with a public interest litigation.

Such contention is disputed by the learned counsel for the petitioner.

It transpires from the order passed by the Hon'ble Division Bench on February 13, 2023 that the State respondents submitted before the Hon'ble Bench that the demarcation of the plots in question have been done and steps have been initiated for removing the encroachment therefrom. The order passed by the Hon'ble Division Bench is set out.

“Learned counsel for the State submits that after filing of the previous report, certain developments have taken place. Meanwhile, demarcation has been done and steps have been initiated for removing the encroachment and notices to the encroachers have been issued. He also submits that there are 400 encroachers and notices have been issued in fresh manner. He is directed to file the report in the form of affidavit in respect of the facts disclosed above and also to disclose the number of notices which have been issued till now and the number of notices the authority intends to issue to encroachers and time frame for the same. The same be filed within 3 weeks.

Learned counsel for the petitioners has submitted that meanwhile the petitioners have been threatened on the issue of filing this public interest petition and a complaint has been lodged to the police.

If the petitioners approach the competent police authority seeking police protection, the same will be extended to them in accordance with law without any delay.”

The notice which is impugned in the present writ petition has been referred to in the public interest litigation and the Hon'ble Division Bench has been pleased to call for a report in the form of affidavit disclosing the details of the notice. Since the Hon'ble Division Bench is in seisin of the matter, this Court has no jurisdiction to deal with the writ petition which is not maintainable before this Court.

In view of the above, the writ petition, being 4582 of 2023 is dismissed.

However, there shall be no order as to costs.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)