

14.03.2023
Item no.4
Court No.6.
AB

**M.A.T. 432 of 2023
With
I A CAN 1 of 2023**

**Shuvrajyati Halder & Others
Vs
The State of West Bengal & Others**

Mr. Anindya Lahiri,
Mr. Nilanjan Adhikari,
Mr. Ravi Kr. Dubeyfor the Appellants.

Mr. Soumitra Bandopadhyay,
Mr. Subhasis Bandopadhyayfor the State.

Mr. Achinta Kr. Banerjee,
Mr. Jayanta Samanta,
Ms. Karunamoye Samantafor the Respondent
Nos.16 to 22.

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

Affidavit of Service filed in Court today be kept with the records.

The appellants/writ petitioners approached the learned Single Judge assailing a notice said to be under Section 10(1) of the West Bengal Highways Act, 1964, for removal of encroachment from Government land.

The grievance of the appellants was that although the notice purported to be under Section 10(1) of the 1964 Act, the language of the notice would indicate that it is really a notice bypassing the procedure stipulated in Sections 10(2) and (3) of the

1964 Act. The appellants pray that they be heard by the Executive Magistrate as contemplated under Sections 10(2) and (3) of the 1964 Act before any action is taken against them.

The learned Single Judge dismissed the writ petition holding that she had no jurisdiction in view of pendency of a public interest litigation before the Hon'ble Division Bench of the Hon'ble Chief Justice. Hence, this appeal.

We have noticed the order of the Hon'ble Division Bench headed by the Hon'ble the Chief Justice, which has been extracted in the impugned order. The notice impugned in the writ petition was not issued pursuant to the said order. In our considered view, nothing stood in the way of the learned Judge deciding the validity or otherwise of the impugned notice in the light of the provisions of the West Bengal Highways Act, 1964.

Mr. Banerjee, learned Advocate appearing for the respondent nos.16 to 22 has produced copies of the notices issued under Sections 10(2) and (3) of the 1964 Act. Mr. Lahiri, learned Advocate appearing for the appellants/writ petitioners says that he is not aware of such notices. He seeks time to obtain instructions.

We do not think that it is necessary to adjourn this matter. Whether or not Section 10(3) notice has been issued to the appellants/writ petitioners, is not

clear today. However, the notice impugned in the present writ petition may be treated as a notice under Section 10(3) and we grant liberty to the writ petitioners/appellants to appear before the Executive Magistrate on March 22, 2023, which is the date fixed for hearing. The schedule of land appearing in the notice dated February 6, 2023, issued to the appellants will be treated as the schedule for the purpose of notice under Section 10(3) of the 1964 Act. The case of each of the writ petitioners/appellants will be considered individually by the Executive Magistrate. The proceedings before the Executive Magistrate naturally will be in accordance with the statutory scheme of the 1964 Act. The principles of natural justice will be strictly adhered to. The Executive Magistrate shall complete the proceedings as expeditiously as possible.

The order under appeal is set aside.

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. No.432 of 2023 is, accordingly, disposed of along with IA 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.)