

AD-33
Ct No.09
11.08.2023
TN

WPA No. 9518 of 2023
IA No: CAN 1 of 2023

Subhasis Panda and others
Vs.
The State of West Bengal and others

Ms. Pampa Dey Dhabal,
Ms. Sabera Khatun

.... for the petitioners

Mr. Amit Baran Dash,
Ms. Ankana Sarkar

.... for the proposed added
respondents/applicants

Affidavit-of-service filed today be kept on record.

IA No: CAN 1 of 2023

Learned counsel for the applicants submits that on the complaint of the applicants-land owners, a proceeding was initiated under Section 10 of the West Bengal Highways Act, 1964 (for short “the said Act”), against the writ petitioners.

Subsequently, the writ petitioners challenged such order of demolition/removal of encroachment by way of the writ petition before this court. It is submitted that, as such, the present applicants are necessary parties.

There is substance in such contention.

Accordingly, IA No: CAN 1 of 2023 is allowed, thereby directing the present applicants to be added as proforma respondents to the writ petition. The necessary consequential corrections shall be carried out by the learned Advocate-on-record for the applicants during the course of the day.

There will be no order as to costs.

In Re: WPA No. 9518 of 2023

Upon consent of parties, the writ petition itself is taken up for hearing. At the outset, it transpires that the present challenge preferred by the writ petitioners ought not to be entertained by this court because of availability of an equally efficacious alternative remedy by way of a challenge before the concerned Magistrate under Section 10(4) of the said Act.

In any event, if the writ court entertains the writ petition, either of the parties shall lose a forum of challenge.

Hence, for the ends of justice, the appropriate course of action would be to refer the petitioners to the concerned District Magistrate.

However, for the purpose of preferring such challenge, since the writ petition was kept pending for some time, it will be deemed that the said period shall

be deducted from the limitation period for preferring such challenge.

Accordingly, WPA No. 9518 of 2023 is disposed of by granting the writ petitioners liberty to challenge the order passed under Section 10(3) of the West Bengal Highways Act against the petitioners before the concerned District Magistrate within a week from date. If such a challenge is preferred within a week from date, the District Magistrate shall entertain the same on the premise that the same has been filed within the statutory limitation period and decide the same in accordance with law, upon giving opportunity of hearing to all concerned, including the petitioners and the added proforma respondents to the present writ petition and all other authorities as need be.

It is expected that such exercise shall be completed by the District Magistrate as expeditiously as possible, preferably within six weeks from the date of such challenge being preferred by the present writ petitioners. It is further clarified that this court has not gone into the merits of the contentions of either of the parties to the writ petition and it will be open to the District Magistrate to decide all issues independently and in accordance with law, without being swayed in any manner by any of the observations made herein.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)