

20.03.2023
rc/ct.no.10
Item No.25

WPA No. 11278 of 2021

Mr. Atish Kumar Biswas
Mr. Amit Singh ...for the Petitioner

Mr. Shahan Shah
Mr. Soumen Barman ...for the respondent no. 9

Mr. Arun Kumar Das
...for the private respondents no. 9 to 12

None appears for the State-respondents.

The petitioner claims to be the recorded owner of the plot in question and complains that the private respondents have encroached upon a portion of PWD land adjoining his property, thereby obstructing his ingress and egress. The petitioner has submitted a representation before the concerned authority on 23rd June, 2021 which is yet to be considered. The petitioner prays for a direction upon the concerned authority to consider the representation at the earliest.

It is submitted on behalf of the private respondents that since the petitioner filed a suit in respect of the plot involved in the writ petition praying for permanent and mandatory injunction against the 6th respondent, impleading Executive Engineer, PWD, Nadia and the Assistant Engineer as proforma respondents therein, the writ petition is not maintainable since the suit was

withdrawn by the petitioner without any liberty to file a fresh suit on the same cause of action.

It transpires from the plaint of the Title Suit being T.S.No. 94 of 2016 that though the suit pertains to the plot in question involved in the writ petition, no relief was sought against the respondents herein who were made proforma defendants in the suit. An order passed in the suit on 18th December, 2022 records that since the matter was amicably settled between the parties, the plaintiff therein did not want to proceed with the suit any further. The suit was withdrawn without any liberty to file a fresh suit on the same cause of action.

The writ petition seeks disposal of the representation submitted by the petitioner before the concerned authority by initiation of proceeding under Section 10 of the West Bengal Highways Act, 1964 (hereinafter referred to as “the Act of 1964”).

In view of the above, the writ petition is maintainable in its present form and prayer.

Since the representation submitted by the petitioner is pending before the concerned authority, the writ petition is disposed of directing the concerned authority being the 10th respondent herein, to consider and dispose of the representation submitted by the petitioner dated 23rd June, 2021 within three months from the date of communication of this order upon affording reasonable opportunity of hearing to all the affected parties including

the petitioner and the private respondents, in accordance with law.

If any unauthorised construction/encroachment upon PWD road/land is found, the authority shall initiate proceedings under Section 10 of the Act of 1964 at the earliest.

With the above observations and directions this writ petition is disposed of.

There shall be, however, no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Suvra Ghosh,J)