

25.04.2023
rc/ct.no.10
Item No.24

WPA No. 11492 of 2022
Samar Kumar Biswas & Anr.
Versus
The State of West Bengal & Ors.

Mr. Kartick Kumar Bhattacharya
Mr. Subhas Chandra Dutta
Mrs. Soumashree Dutta
Mrs. Susmita Das ...for the petitioners

Mr. Susovan Sengupta
Mr. Subir Pal ...for the State

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

None appears on behalf of private respondents despite service.

The order passed by the Sub-Divisional Magistrate and Sub-Divisional Officer, Tehatta, Nadia on April 4, 2022 is assailed in the writ petition.

In an earlier writ petition being WPA No. 24463 of 2018 the petitioners complained of unauthorised construction by the private respondents by encroaching upon Government land. Pursuant to an order passed by this Court on 2nd December, 2021 directing the 3rd respondent therein to consider and dispose of the representation submitted by the petitioners within three months from the date of the order upon affording reasonable opportunity of hearing to all the interested persons including the petitioners and the private respondents, the matter was taken up for consideration by

the concerned authority. By the order impugned, the Sub-Divisional Magistrate has held that the private respondents have encroached upon Government land. But at the same time the order indicates that such encroachment is not hindering the ingress and egress of the petitioners and there shall be chances of breach of peace if the encroachment is sought to be removed. The concerned authority has directed both the parties to maintain status quo on the stretch of land, meaning thereby that he has in fact acceded to the encroachment made by the private respondents. Such conduct of the concerned authority is not only unknown to law but is highly deplorable.

Section 10(1) of the West Bengal Highways Act, 1964 is set out herein below:-

“Section 10(1) If any person;-

- (a) is found to have made an encroachment on any road, street, path, way or land which is declared to be a highway under sub-section (1) of Section 3, or*
- (b) makes an encroachment on a highway in contravention of the provisions of Section 8, or*
- (c) does not remove an encroachment on the expiry or cancellation of any permit granted to him, the Highway Authority or any officer authorised by him in this behalf shall serve a notice on him requiring him to remove the encroachment and*

restore the highway to its original condition within the period specified in the notice.”

In view of the above, this Court is inclined to hold that since encroachment by the private respondents upon Government property has been found, the concerned authority is directed to initiate proceedings under Section 10 of the West Bengal Highways Act, 1964 forthwith and take the proceeding to its logical conclusion within two months from the date of communication of this order upon affording reasonable opportunity of hearing to all the interested persons including the petitioners and the private respondents in accordance with law.

The order impugned passed by the Sub-Divisional Magistrate or Sub-Divisional Officer on April 04, 2022 is set aside.

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)