

D/L. 25.
September 6, 2023.
MNS.

WPA No. 13056 of 2023

Raju Gupta
Vs.
The State of West Bengal and others

Mr. Supriyo Chattopadhyay,
Mr. Samaresh Chandra Dhara

... for the petitioner.

Mr. Jayeeta Sinha

...for the State.

Mr. Soumen Kumar Dutta,
Mr. Subhas Jana

...for the private respondent.

1. The petitioner contends that the petitioner gave a representation to the respondent authorities alleging illegal encroachment made by the private respondent. Accordingly, it is submitted that a proceeding ought to have been drawn against the private respondent under the West Bengal Highways Act, 1964 (Act of 1964).
2. Learned counsel appearing for the private respondent cites an internal Notification of the Public Works Department, Government of West Bengal, bearing No. 3P-37/13/440-R/PL dated August 11, 2015, in exercise of the

power conferred by Section 5 of the Act of 1964, whereby certain authorities were designated as authorities under the Act of 1964. By placing Serial No. 27 of the Tamluk Highway Division, it is argued that for the Mecheda Tamluk Road, which is the territory regarding which the petitioner alleges encroachment, the Executive Engineer and the Assistant Engineer under Tamluk Highway Sub-Division having jurisdiction of the road have been authorized to act under such provision.

3. However, in the absence of any existing notification, it is argued, which is a pre-requisite under Section 2 read with Section 5 of the Act of 1964, there is no authority at present which has been notified by the appropriate government under the said Act of 1964.
4. Hence, the present writ petition, it is argued, is misconceived.
5. Learned counsel appearing for the State hands over a communication by the Assistant Engineer, Tamluk Highway Sub-Division, dated June 21, 2023, where it has been indicated that the said official had requested

the Block Land & Land Reforms Officer, Nandakumar, Post Office and Police Station- Nandakumar, Purba Medinipur, for early demarcation of the government plot, but no reply was made by the BL&LRO. The department, it is indicated, will act for removal of the unauthorised encroachment, if any, as per the Act of 1964 after receiving the demarcation report of the said government plot from the concerned BL&LRO.

6. Even without going into the question as to whether the respondents and/or the Assistant Engineer have the authority under the Act of 1964, the allegation of the petitioner is more basic, to the extent that the private respondent has allegedly encroached upon public property.
7. At this stage, it would be premature for the court to either go into the merits of the allegations of illegal encroachment and/or hold either way regarding the jurisdiction of the appropriate authority.
8. However, since an allegation has been made regarding encroachment of public property, the concerned District Magistrate is required to undertake an enquiry and, depending upon

the outcome of such enquiry, if necessary, refer the matter before the appropriate authority for taking out proceedings for removal of illegal encroachment.

9. Hence, WPA No. 13056 of 2023 is disposed of by directing the respondent no. 2, the District Magistrate, to call for a report from the concerned BL&LRO on the issue as to whether the private respondent is actually in unauthorised occupation of public property or has unlawfully encroached upon any public property.

10. Upon such report being received, if the District Magistrate is *prima facie* satisfied that there is some encroachment, the District Magistrate shall within a week thereafter refer the matter to the appropriate authority under the Act of 1964 for taking out proceedings immediately for removal of such encroachment.

11. Such exercise shall be concluded by the respondent no. 2 within eight weeks from the date of communication of this order to the respondent no. 2.

12. It is made clear that the allegations made in the writ petition and the counter allegations made by the private respondent have not

been dealt with on merits and it will be open to the appropriate authority, if referred to by the District Magistrate, to dispose of the matter independently and upon giving opportunity of hearing to all concerned and in accordance with law.

13. The report filed by the State be kept on record.

14. There will be no order as to costs.

15. 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.)