

22.09.2023
rc/ct.no.10
Item No.20

WPA No. 13661 of 2023
Hafeza Begum & Ors.
Versus
The State of West Bengal & Ors.

Mr. Amar Nath Sen
Mr. Malay Dhar
Mr. Amit Bikram Mahata ..for the Petitioners

Mr. Chandi Charan De
Mr. Anirban Sarkar ...for the State

Mr. Shyama Prosad Purkait
Mr. Debabrata Mondal ..for the respondent no. 10

Mr. Prokash Chandra Mondal
....Respondent no.9 (in person)

Heard learned counsels for the parties.

The petitioners have primarily challenged implementation of the notice dated May 30, 2023 which has admittedly not been implemented till date.

The petitioners claim title in respect of the plot no. 1203 in Mouza- Purba Durgapur, J.L.No. 111, Police Station – Falta, District – South 24-Parganas.

It is submitted on behalf of the respondents that pursuant to an order passed by a coordinate Bench of this Court on July 06, 2021 in WPA No. 10787 of 2021, notice under Section 10(1) of the West Bengal Highways Act, 1964 (hereinafter referred to as “the Act of 1964”) was served upon the alleged encroachers of plot nos. 1201 and 1202 pursuant to which an order was passed by the Executive Magistrate, Diamond Harbour, South 24-Parganas on December 07, 2022 under Section 10(3) of the

Act of 1964 directing all the encroachers to vacate the said plots and delivered possession of the same in favour of the Assistant Engineer, PWD, Diamond Harbour Sub-Division within 10 days from the date of receipt of the order. The husband of the first petitioner, Abdul Rajjak Molla @ Raju appeared before the authority in the said proceeding. The order was carried in appeal by the same person, Abdul Rajjak Molla @ Raju under Section 10(4) of the Act of 1964 and by an order passed on March 23, 2023, the District Magistrate, South 24 Parganas dismissed the appeal and affirmed the order passed under Section 10(3) of the Act of 1964. Since the order could not be implemented earlier due to the panchayat election, a fresh notice has been issued on September 19, 2023 by the Assistant Engineer, PWD, Diamond Harbour Sub-Division to the Sub-Divisional Police Officer, Diamond Harbour Sub-Division, South 24- Parganas for implementation of the order passed under Section 10(3) of the Act of 1964.

It is categorically submitted on behalf of the petitioners that the petitioners have no claim in respect of the plot nos. 1201 and 1202 upon which the encroachment is alleged. The petitioners only claim title in respect of the plot no. 1203 which is not the subject matter of the proceedings under Section 10 of the Act of 1964.

In view of the above, this Court is inclined to hold that the concerned authority being the 6th respondent be

directed to implement the order under Section 10(3) of the Act in accordance with law.

The writ petition is accordingly disposed of directing the 6th respondent to implement the order passed by the Executive Magistrate, Diamond Harbour on December 07, 2022 under Section 10(3) of the Act of 1964 and take necessary steps for removal of all encroachers from the plot nos. 1201 and 1202 within one month from the date of communication of this order.

The 8th respondent is directed to render all necessary assistance to the 6th respondent in implementation of the order.

It is made clear that no steps shall be taken by the authority in respect of the plot no. 1203 which, according to the petitioners, is owned by them.

With the above observation and direction 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)