

September 13, 2023
ARDR (17)

WPA 14498 of 2023

Ashim Halder & anr.
Vs.
The State of West Bengal & ors.

Adv. Ayan Poddar,
Adv. Soham Dutta,
...for the petitioners.
Adv. Prakash Ch. Mondal,
...respondent no.6 in person.
Adv. Shyama prasad Purkait,
Adv. Debabrata Mondal,
...for the respondent no.7.
Adv. Chandi Charan De,
Adv. Anirban Sarkar,
...for the State.

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

Heard learned counsels for the parties.

The petitioners primarily challenge the order passed by the District Magistrate, South 24 Parganas under Section 10(4) of the West Bengal Highways Act, 1964 dismissing the appeal preferred by the petitioners against an order passed under Section 10(3) of the Act.

By an order passed on 22nd November, 2022 in WPA 14412 of 2022, this Court directed the concerned authority to take the proceeding under Section 10(3) of the Act of 1964 pending before the authority to its logical conclusion within a stipulated time frame upon hearing all the interested persons including the petitioners and the private respondents. The order passed under Section 10(3) of the Act on 1st December, 2022 indicates that the petitioners failed and neglected to appear before the Executive

Magistrate, Diamond Harbour on the said date despite the fact that they were present before the authority on the earlier dates and were aware of the date. Since the petitioners chose not to appear before the authority on the relevant date, the order under Section 10(3) of the Act was passed by the Executive Magistrate on the said date authorising the Assistant Engineer, PWD, Diamond Harbour Sub-Division, to recover possession after removing the encroachment from the plot in question within a period of fifteen days therefrom. The said order was carried in appeal by the petitioners under Section 10(4) of the Act and by an order passed on 23rd March, 2023, the appeal was dismissed with an observation that the appellants/petitioners had made unauthorised structures over the Government land which are illegal and are liable to be removed. The Executive Magistrate, PWD, Diamond Harbour Sub-Division, was directed to take necessary action as per law.

It appears from the order impugned dated 23rd March, 2023 that both the petitioners and the private respondents were heard by the authority which took into account the submission made by the parties as well as the order passed under Section 10(3) of the Act on the basis of the field enquiry report of the Block Land & Land Reforms Officer, Falta.

The District Magistrate has passed a reasoned and speaking order upon taking into consideration the submission made by the parties as well as the materials

placed before him. There is no illegality or irregularity in the decision making process of the District Magistrate which warrants interference by this Court. Since encroachment of 275 square feet of land in L.R. plot no.1202 which is PWD land has been determined by the concerned authority, this Court is inclined to hold that the writ petition is devoid of any merit and is liable to be dismissed.

In view of the above, the writ petition being WPA 14498 of 2023 is dismissed.

It is submitted on behalf of the private respondents that notice of demolition was issued by the authority on 24th August, 2023, but demolition could not be made due to intervention of Panchayat election.

In the light of the observation made hereinabove, the concerned authority being the 3rd respondent herein, is directed to comply with the order passed by the District Magistrate on 23rd March, 2023 upon service of notice upon the alleged encroachers and complete the entire process within one month from date.

With the aforesaid observations and directions, the writ petition, being WPA 14498 of 2023 is dismissed.

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.)