

Dd 27 09.10.2023

MAT 1488 of 2023
with
I.A NO: CAN 1 of 2023

Niranjana Bera
Vs.
Asutosh Panda & Ors.

Ms. Pampa Dey Dhabal,
Mr. N. K. Gupta,
Ms. Sabera Khatun, Advocate
... ... For the Appellant

Mr. Balaram Pandit,
Mr. Anjan Dutta, Advocates
... ... For the Private Respondents

Mr. Chandi Charan De, AGP
Mr. Anirban Sarkar, Advocates
... ...For the State

The appeal is directed against an order dated July 14, 2023 passed in WPA 28618 of 2022. By the impugned order, the learned Judge, set aside the order dated December 7, 2022 passed by the District Magistrate, Purba Medinipur exercising powers under Section 10(4) of the West Bengal Highways Act, 1964.

The learned Judge found that, the order dated December 7, 2022 was without any reason and, therefore, directed the District Magistrate to pass a reasoned and speaking order within a month from the date of communication of the order dated July 14, 2023 after affording reasonable opportunity of hearing to the interested parties including the appellant and the private respondents herein.

Learned advocate appearing for the appellant submits that, the private respondents are encroachers. The sub-Divisional Magistrate, considered all aspects of the matter and passed a reasoned order which was upheld by the District Magistrate. She submits that, the impugned order should set aside.

State and the private respondents are represented.

Learned advocate appearing for the private respondents submits that the District Magistrate is acting in terms of the impugned order dated July 14, 2023 and passed orders dated September 29, 2023 and October 4, 2023. He submits that, the District Magistrate is awaiting the report called for as recorded in the order dated October 4, 2023.

It appears from the records that, a proceeding under the West Bengal Highways Act, 1964 was initiated in which, the Sub-Divisional Magistrate, Egra passed an order dated August 5, 2022. The private respondents preferred an appeal therefrom. The appeal was dismissed by an order dated December 7, 2022 by the appellate authority being the District Magistrate exercising powers under Section 10(4) of the West Bengal Highways Act, 1964. Being aggrieved, the private respondents preferred a writ petition being WPA 28618 of 2022 which was disposed of by the impugned order dated July 14, 2023.

We perused the order of the District Magistrate dated December 7, 2022 which was assailed in the writ petition being WPA 28168 of 2022. The order dated December 7, 2022 was assailed in such writ petition as non-speaking. On perusal of such order, we find that, the District Magistrate, after noting the order of the Sub-Divisional Magistrate impugned before him,

proceeded to uphold such order. He did not ascribe any reason as to why he upheld such order. He also did not discuss the rival contentions of the parties in his order dated December 7, 2022.

In such circumstances, the learned Judge was justified in holding that the order of the District Magistrate dated December 7, 2022 was non-speaking.

In such circumstances, we find no ground to interfere with the order dated July 14, 2022 passed by the learned trial Judge. We, however, direct the District Magistrate to dispose of the proceeding under Section 10(4) of the West Bengal Highways Act, 1964 within four weeks from October 19, 2023 positively, by adhering to the directions issued by the impugned order dated July 14, 2023.

MAT 1488 of 2023 along with connected applications are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)