

D/L. 11.
August 10 , 2023.
MNS.

WPA No. 18994 of 2023

Samir Kumar Ghosh and another
Vs.
The State of West Bengal and others

Mr. Samim Ahammed,
Ms. Aambiya Khatun

... for the petitioners.

Mr.Somnath Ganguli,
Ms. Priyambada Singh

...for the State.

Mr. Saumyen Datta,
Mr. Ashutosh Mukherjee

...for the respondent no. 6.

Learned counsel for the petitioners alleges that a notice of removal of alleged encroachment by the petitioners has been given to the petitioners without giving any prior right of hearing to them.

It is submitted that the petitioners have not been furnished with any documents whatsoever, which were apparently relied on by the authorities while issuing the said notice.

It is further contended that in the reference portion of the subject matter of the notice, annexed at page 71 (Annexure P10) of the writ petition, a purported order passed by the District

Magistrate, North 24 Parganas, vide Serial No. 4 dated November 23, 2022 has also been referred to. It is submitted that, as such, since the District Magistrate himself is the appellate authority, the petitioner anticipates a prejudging by the said authority, which will render the right of appeal before the said authority infructuous.

Learned counsel for the State submits that in connection with a prior writ petition preferred by a third party to the present matter, an order was passed on September 5, 2022 by a co-ordinate Bench, pursuant to which a hearing was undertaken by the District Magistrate and thereafter, upon such enquiry, the petitioners as well as other persons were detected to be in unauthorised occupation/encroachment of the public property.

As such, the present impugned notice was issued within the contemplation of Section 10(1) of the West Bengal Highways Act, 1964 (1964 Act).

It is submitted that the present challenge is premature, since under sub-section (4) of the said Section, the petitioner has a remedy before the concerned Magistrate.

Heard learned counsel appearing for the parties.

It transpires that the order of the District Magistrate, referred to in the impugned notice dated April 27, 2023, was passed in connection with a different matter, on the direction of a co-ordinate Bench, issued in respect of a challenge having been preferred by a third party to the writ petition.

As such, there is no scope of apprehension in the mind of the petitioners that the Magistrate has a predetermined mind when the petitioner approached the said authority under Section 10(4) of the 1964 Act.

In so far as the impugned notice is concerned, it is rightly pointed out by learned counsel for the State, as also evident from the tenor of the same, that the same is a first notice under Section 10(1) of the 1964 Act. In the event the petitioners have any grievance against such notice, the remedy of the petitioners lies before the District Magistrate having territorial jurisdiction, within the contemplation of Section 10(4) of the 1964 Act, which stipulates that if the person responsible for the encroachment is aggrieved by the order of the Executive

Magistrate made under sub-section (3) he may, within fifteen days from the date of the Executive Magistrate's order, appeal to the District Magistrate. The District Magistrate shall, after hearing the parties, make an order affirming, modifying or setting aside the order made under sub-section (3).

In the present case, the petitioners suggest that the petitioners are not armed with a copy of the order of the Magistrate for preferring such challenge. However, there is nothing to debar the petitioners from approaching the Magistrate seeking all relevant papers to enable the petitioners to constitute a proper challenge under Section 10(4) of the 1963 Act before the appropriate forum.

Accordingly, WPA No. 18994 of 2023 is disposed of by granting liberty to the petitioners to challenge the impugned notice issued under Section 10(1) of the 1964 Act before the District Magistrate, North 24 Parganas, that is, the respondent no. 2 herein.

If such an application is preferred within a week from date, the same shall be considered to be one filed within the limitation period stipulated in Section 10(4) of the 1964 Act. Upon an

application being made, the District Magistrate shall decide on the same in accordance with law upon giving an opportunity of hearing to all concerned.

Along with the said application under Section 10(4), the petitioners will also be at liberty to apply before the Magistrate for furnishing the relevant documents to enable the petitioners to prefer a challenge worth the name, in particular, a copy of the order of the District Magistrate on the premise of which the notice was issued to the petitioners.

If so applied for, the District Magistrate shall arrange for a copy of the said order, along with other relevant documents, if any, to be furnished to the petitioners to give an hearing to the petitioners under Section 10(4) of the 1964 Act.

It is made clear that nothing in this order shall influence the District Magistrate, while deciding the application, if any preferred by the petitioners, on merits.

It is expected that the District Magistrate shall decide the issue as raised by the petitioners, if so filed, as expeditiously as possible, preferably

within eight weeks from the application being made by the petitioners.

No coercive action for eviction of the petitioners shall be taken in terms of the impugned notice till a fortnight, to enable the petitioners to prefer the challenge before the District Magistrate.

Since no affidavits were invited from any of the respondents, it will be deemed that the respondents have not admitted any of the allegations made in the writ petition.

There will be no order as to costs.

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.)

