

WPA 20208 of 2023

Raghunath Tanti

Vs.

The State of W.B. & Ors.

Mr. Gouranga Kumar Das
Mr. Kapil Ch. Sahoo
Mr. Kanailal Dutta ...for the petitioner.

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

Mr. Nilotpall Chatterjee ...for the respondent No.2.

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

None appears for the National Highways Authority of India and the private respondents despite service.

Heard learned counsels for the parties.

It is contended on behalf of the petitioner that in an earlier writ petition being WPA 2249 of 2021 wherein the petitioner was not impleaded as a party, a co-ordinate Bench of this Court, by an order passed on 30th November, 2021, directed the Diamond Harbour National Highway Sub-Division to cause an enquiry into the construction made by the private respondents therein and in the event construction made by the private respondents was found to be on the land belonging to the Authority, urgent steps were directed to be taken for demolition of such

construction and resumption of possession by the authority.

Pursuant to the said order, the Executive Engineer, National Highway Division-I by an order passed on 29th March, 2023, recorded that upon perusal of the demarcation of land made by the Block Land and Land Reforms Officer, Kulpi it appeared that the private respondents including the present petitioner occupied a portion of national highways land by way of encroachment. The name of this petitioner was included in the said order despite the fact that the petitioner was not a party to the writ petition in compliance with which the order was passed.

The petitioner preferred an appeal against the said order before the District Magistrate, South 24 Parganas. By a letter issued on 12th April, 2023, the District Magistrate returned the appeal to the petitioner since the said authority is not the appellate authority under the Control of National Highways (Land and Traffic) Act, 2002.

Immediately thereafter, the petitioner wrote to the District Magistrate and the Executive Engineer, National Highway Division-I requesting them to provide address/authority of the National Highways Tribunal situated in Kolkata in order to enable him to prefer the appeal before the said authority.

In the meantime, the Executive Engineer, National Highway Division-I has issued a letter to the

Superintendent of Police, Sunderbans Police District, Kakdwip, 24 Parganas, South on 10th August, 2023 requesting police assistance for removal of the encroachment in terms of the order of this Court.

The petitioner seeks to prefer an appeal against the order passed by the Executive Engineer, National Highway Division-I on 29th March, 2023 and prays for stay of the order as well as the letter issued on 10th August, 2023 till disposal of the appeal.

It is submitted on behalf of the respondents that they are not aware regarding the appropriate authority who can deal with the appeal intended to be preferred by the petitioner.

In view of the above, this Court is inclined to hold that the petitioner be granted liberty to prefer statutory appeal against the order dated 29th March, 2023 within a stipulated time frame, in the interest of justice.

The writ petition is accordingly disposed of with liberty to the petitioner to prefer an appeal before the appropriate forum against the order dated 29th March, 2023 passed by the Executive Engineer, National Highway Division-I, in accordance with law.

In the event the petitioner prefers the statutory appeal within 15 days from date, the appellate authority shall deal with the appeal on merits without dismissing the same on the ground of limitation. It is expected that the appellate authority shall dispose of the appeal within

three months from the date of filing thereof upon affording reasonable opportunity of hearing to the parties therein, in accordance with law.

It is made clear that this Court has not gone into the merits of the case and the appellate forum shall be at liberty to deal with the appeal on merits independently and without being influenced by any observation that may have been made in this order.

The order dated 29th March, 2023 and the letter issued on 10th August, 2023 insofar as the petitioner is concerned be stayed till the appeal is taken up for hearing.

In the event the petitioner fails to prefer the appeal within a period of 15 days from date, the order of stay shall stand automatically vacated.

With the above observations and directions the writ petition being WPA 20208 of 2023 is disposed of.

However, there shall be 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 supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)