

9th October,
2023
(AK)
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W.P.A 22117 of 2023

Mahadev Mondal
Vs.
State of West Bengal and others

Mr. Avirup Chatterjee
Mr. Rishav Das
...for the petitioner.

Mr. Rajarshi Basu
Mr. K.M. Hossain
...for the State.

Mr. Samarjit Bellal
...for the private respondent.

1. Learned counsel for the petitioner contends that instead of taking steps under Section 10(2) of the West Bengal Highway Act, 1964 in due course of law, the respondent authorities have given a notice dated August 10, 2023 whereby it has been warned that if the petitioner does not comply with the notice by removing the purportedly illegal construction and encroachment, the respondent authorities shall demolish the same.

2. Learned counsel for the respondent authorities submits that the said notice is one, as mentioned in its caption, under Section 10(1) of the 1964 Act and the respondent authorities shall comply with due process of law under Section 10(2) of the said Act prior to taking any steps for eviction of the petitioner.

3. Learned counsel for the borrower submits that this is the second such exercise and the petitioner had admitted that the petitioner is in unauthorized occupation and is an encroacher on Government property.

4. Subsequently, the petitioner even sought a review without success.

5. Learned counsel for the petitioner controverts such allegations and submits that in a public interest litigation, the concerned Bench directed the concerned District Magistrate to ascertain whether there is illegal encroachment on the Government land. It is argued that, pending the same, no proceedings can be taken against the petitioner.

6. A perusal of the order passed in the public interest litigation indicates that the same does not prevent the respondent authorities from taking steps in due process of law under the appropriate statute for removal of encroachment of government property.

7. The said direction in the public interest litigation was of a general nature directing the District Magistrate to look into the allegation of encroachment and has no bearing on the instant issue.

8. In any event, since learned counsel for the State justifies the issuance of the notice and a perusal of the same indicates that the same was undoubtedly given

under Section 10(1) of the 1964 Act, there is no question of interfering with the same at this juncture.

8. Accordingly, WPA 22117 of 2023 is disposed of by directing the respondent authorities to take due steps in accordance with law under Section 10(2) of the West Bengal Highway Act, 1964 and not to evict the petitioner and/or remove the encroachment on the Government property except in due process of law.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)