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03.05.2023
Ct. No.39
b.das

W.P.A. 23565 of 2022

Anita Chakraborty & Ors.
Vs.
The State of W. B. & Ors.

Mr. Pankaj Halder
Mr. Tapas Manna ...for the petitioners.

Mr. Soumitra Bandyopadhyay
Mr. Priyabrata Batabyal ... for the State.

Although this is an application under Article 226 of the Constitution of India, inter alia, praying for a direction upon the respondents to set aside and withdraw the purported demarcation and/or enquiry report dated 17.10.2022 of the concerned Block Land and Land Reforms Officer and the consequential report of the concerned authority, the learned counsel for the petitioners, at this stage, prays that his client may be granted a proper hearing under Section 10(3) of the West Bengal Highways Act, 1964 and no coercive measures may be taken in respect of his property in question till a decision could be made.

Learned counsel for the petitioners further submits as follows. In 2016 the petitioner No.2 made an application before the authority for returning the land which was acquired by the concerned authority in 2021. The petitioners filed a civil suit, which pertains to the demarcation of the said land. Pursuant to a proceeding

before this Court, the Block Land and Land Reforms Officer proceeded to act in respect of the petitioners' land in terms of the West Bengal Highways Act. Notice was served. The hearing had to be adjourned. Without giving any further opportunity of hearing, the Assistant Engineer passed an order on 19.10.2022. In any event, since the civil suit was pending, the Block Land and Land Reforms Officer ought not to have proceeded to have demarcated the said land.

Learned counsel representing the State submits as follows. Pursuant to an order passed in a Public Interest Litigation being WPA (P) No.317 of 2021, the respondent authorities were asked to decide the issue after hearing the parties in respect of an unauthorised and illegal construction over PWD road. This led to the initiation of the instant proceeding. Since Section 10(2) deals with whether encroachment has been made out or not, the concerned Block Land and Land Reforms Officer proceeded to demarcate the land to find it out. If the petitioner has any objection to this he can fairly take up the same before the concerned authority under Section 10(3) of the West Bengal Highways Act. In fact, this is in effect a premature application.

I have heard the submissions of the learned counsel for the parties and have perused the writ petition.

It appears that the proceeding under the West Bengal Highways Act has not reached the stage of hearing under sub-section (3) of Section 10. The petitioners would have

adequate opportunity to vent all his grievances and rely on necessary documents at this stage if the petitioners are willing to do so.

In view of the same, the writ petition is disposed of by directing that during the hearing under Section 10(3) of the West Bengal Highways Act, the petitioners shall be at liberty to agitate all the points including the question of maintainability vis-a-vis the civil suit.

It is further directed that no adverse steps would be taken in respect of the property in question till an order is passed under Section 10(3) of the West Bengal Highways Act. The said order, however, would be subject to any appeal, if preferred.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Jay Sengupta, J.)