

WPA 24830 of 2022

Samarendra Nath Biswas & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Srijib Chakraborty
Ms. Pallavi Ray ...for the petitioner.

Mr. P. P. Roy
Mr. R. C. Guchhait ...for the State.

Mr. Tulshidas Ray
Mr. Tirthankar Roy
...for the respondent Nos.9 to 13 & 15 to 19.

Heard learned counsels for the parties.

The order impugned dated 21st March, 2022 passed by the Sub-Divisional Officer, Tehatta, Nadia is assailed in the writ petition.

In an earlier writ petition being WP No.33116 (W) of 2014, the writ petitioners complained that the private respondents had raised unauthorised construction by encroaching upon a portion of PWD land, thereby obstructing their egress and ingress. By an order passed on 20th January, 2015, a co-ordinate Bench of this Court disposed of the writ petition directing the Executive Engineer-II, Nadia Division (Roads) to dispose of the representation submitted by the petitioners therein and make an enquiry to find out the genuineness of the grievances made by the petitioners. The authority was also

directed to give a hearing to the petitioners as well as the private respondents and in the event the allegations of the petitioners were found to be correct, to take appropriate steps for removal of encroachment in compliance with the requirement under Section 10 of the West Bengal Highways Act, 1964.

Pursuant to the said order, demarcation of the plot in question was made by the concerned authority and upon finding that the private respondents had encroached upon PWD road, notice under Section 10(1) of the Act of 1964 was issued to them directing them to remove the structures standing thereon and restore the land to its original position.

Surprisingly, by the order impugned passed on 21st March, 2022, the Sub-Divisional Officer, Tehatta, Nadia disposed of the case with an instruction to maintain status quo on the said land and also with an observation that no further encroachment permanent or otherwise be made by anybody thereon. The order dated 21st March, 2022 is set out:

“The petitioner and opposite party both were present. Perused the report of the Executive Engineer, PWD (Nadia Division) and the report of the Inspector-in-Charge, Karimpur P.S.

As per the report of the Assistant Engineer, PWD, Plassey Sub-Division and Block Land & Land Reforms Officer, Karimpur-I Block –

- 1). There is no problem in playing of vehicles and commuters due to the said encroachment.
- 2). There is 10 feet wide road used by the applicant as passage and there is no problem faced by the petitioner for accessing to main road.

3). There are around 100 (hundred) commercial establishment situated on the near vicinity of the PWD land so it will be un justified to dismantle only there construction and it will create resentment among the other encroachers.

As per report of the Inspector-in-Charge, Karimpur P.S. there is every possibility of breach of peace if any dismantling takes place.

So the case is disposed of with an instruction to maintain station quo on the said land and no further encroachment permanent or otherwise will be made by anybody.

Let the copy of the Order be communicated to all concerned.

Sd/-
Sub-Divisional Officer, Tehatta
Tehatta, Nadia”

It is submitted on behalf of the private respondents that undoubtedly the concerned authority has the right to issue notice under Section 10 (1) of the Act of 1964 upon detection of encroachment on PWD land. But since in the instant case, the enquiry was held pursuant to an order passed by this Court wherein the writ petitioners complained that their egress and ingress were obstructed by way of such encroachment, the concerned authority, in the impugned order, has rightly held that since the egress and ingress of the petitioners were not disturbed by way of encroachment, an order of status quo would suffice.

Section 10 (1) of the West Bengal Highways Act, 1964 is reproduced hereinbelow for proper adjudication of the matter:

“10.(1) If any person, --

(a) is found to have made an encroachment on any road, street, path, way or land which is declared to be a highway under sub-section (1) of section 3, or

- (b) makes an encroachment on a highway in contravention of the provisions of section 8, or
 - (c) does not remove an encroachment on the expiry or cancellation of any permit granted to him,
- the Highway Authority or any officer authorised by him in this behalf shall serve a notice on him requiring him to remove the encroachment and restore the highway to its original condition within the period specified in the notice.”

The order impugned records that the PWD land in question has been encroached upon by around 100 commercial establishments and it will be unjustified to dismantle the same as it will create resentment amongst the encroachers. Such an order is not only shocking and ridiculous but also unknown to law. It is strange that the Sub-Divisional Officer, Tehatta, Nadia despite holding that the PWD land has been encroached upon, has chosen to bestow his blessings upon the encroachers and allow them to continue with the said encroachment.

The order impugned is required to be set aside forth with.

In view of the above, the order passed on 21st March, 2022 by the Sub-Divisional Officer, Tehatta, Nadia is set aside.

The Sub-Divisional Officer, Tehatta, Nadia, being the 6th respondent herein, is directed to proceed with the proceeding under Section 10 of the Act of 1964 and take the proceeding to its logical conclusion within two months from the date of communication of this order, upon

affording reasonable opportunity of hearing to all the interested persons including the petitioners and the private respondents, in accordance with law.

With the above observations and directions this writ petition being WPA 24830 of 2022 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.)