

December 22, 2023
ARDR (9)

WPA 26285 of 2023

Bikash Chandra Majumdar & ors.
Vs.
The State of West Bengal & ors.

Adv. Supriyo Chattopadhyay,
Adv. Deboki Chatterjee,

...for the petitioners.

Adv. Tapas K. Bhattacharya,
Adv. Aviroop Bhattacharya

...for the respondent no.10.

Adv. Kakali Samajpaty,
Adv. Saikat Sen,

...for the State.

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

Heard learned counsels for the parties.

The petitioners claim to be the recorded owners of the plot in question and complain that the private respondent has encroached upon a portion of the State highway adjoining their property by raising unauthorised construction therein, thereby obstructing their egress and ingress. Pursuant to an application made by the petitioners before the authority earlier, an enquiry was held by the concerned authority and upon detection of encroachment of the State highway, notice under Section 10 of the West Bengal Highways Act, 1964 was served upon this private respondent on 2nd May, 2015 directing the respondent to remove the encroachment and restore the land to its original condition within a stipulated time frame. The said notice was responded to by the private respondent on 19th May, 2015 stating that he has been residing with his family

in the plot in dispute without any encroachment of the highway land. No further step was taken by the authority in view of the fact that an application under Section 133 of the Code of Criminal Procedure was filed against the private respondent which is still pending.

The petitioners seek to file a fresh representation before the concerned authority ventilating their grievance and pray for a direction upon the authority to consider the representation at the earliest.

Learned counsel for the State respondent submits that the 5th respondent be directed to consider the representation in accordance with law.

In view of the above, this Court is inclined to hold that since no step is taken by the authority in this regard after 2015, the concerned authority be directed to take fresh steps in order to ascertain the alleged encroachment and remove the same in accordance with law.

The writ petition is accordingly disposed of with liberty to the petitioners to submit a comprehensive representation before the 5th respondent within a week from date. The 5th respondent is directed to consider and dispose of the representation within three months from the date of receipt thereof upon affording reasonable opportunity of hearing to all the interested persons including the petitioners and the private respondent, in accordance with law.

With the aforesaid directions the writ petition is disposed of.

There shall however, 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.)