

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 2294 of 2023

With

IA NO.: CAN 1 of 2023

The State of West Bengal & Ors.

Vs.

Dipankar Mayra & Ors.

For the Appellants

: Mr. Soumitra Bandyopadhyay

Mr. Priyabrata Batabyal

For the respondent nos.1 to 14: Mr. Nilanjan Adhikari

Heard & Judgment on : December 13, 2023

DEBANGSU BASAK, J.:-

1. The appeal is directed against an order dated October 10, 2023 passed in WPA 24402 of 2023.

2. By the impugned order, the learned Single Judge directed filing of affidavits in a writ petition. The learned Single Judge directed *status quo* in respect of the nature, character and possession of the subject land to be maintained till December 15, 2023.
3. Proceedings under the West Bengal Highways Act, 1964 were initiated as against the writ petitioners/private respondents herein. In such proceedings, an order of eviction dated September 5, 2023 was passed. An appeal was carried to the appellate authority under the Act of 1964. The appeal was rejected by an order dated October 5, 2023. Thereafter, by the impugned order, the learned Single Judge directed maintenance of *status quo* with regard to nature, character and possession of the land concerned under the order of eviction.
4. In course of hearing, today we repeatedly invited the learned Advocate appearing for the writ petitioners/private respondents to place before us any evidence of title of his clients with regard to the land in question. Adjournment for such purpose was prayed for and granted yesterday. He

submits that initially, his clients applied for permission to occupy the highway which was refused. Thereafter, the proceedings under the Act of 1964 were initiated. The writ petition is yet to be finally disposed of. The affidavits therein are complete.

5. An interim order can be passed only if a *prima facie* case is made out by the applicant for the same. Balance of convenience and possibility of irreparable prejudice being caused by not grant of interim relief are other considerations.
6. As noted above, proceedings under the Act of 1964 were initiated as against the writ petitioners/private respondents pursuant to orders of Courts. An order of eviction was passed on September 5, 2023. The appeal therefrom was dismissed on October 3, 2023.
7. Land in question, therefore, stands established to be a Highway within the meaning of Act of 1964 by virtue of the orders passed under Act of 1964. Independent thereof, this application of the private respondents to the authorities for grant of patta also establishing that they are without any title with regard thereto and that the land in question is a highway.

No material is placed before us to suggest that land in questioned is not a highway. As noted above, writ petitioners/private respondents do not claim title over any part or portion of the land involved.

8. We do not find that the order dated September 5, 2023 passed under the Act of 1964 or the order dated October 3, 2023 passed by the appellate authority suffers from the vice of breach of principles of natural justice.
9. In such circumstances, we are of the view that the writ petitioners/private respondents did not make out any *prima facie* case warranting grant of interim order as directed by the impugned order.
10. In such circumstances, the interim order granted by the learned Single Judge dated October 10, 2023 is vacated.
11. We request the learned Single Judge to hear and dispose of the writ petition as expeditiously as possible.
12. It is clarified that, the pendency of the writ petition or this order will not be construed to be a grant of stay of the eviction

proceedings in any manner whatsoever or the orders passed under the Act of 1964 as upheld in appeal.

13. **MAT 2294 of 2023** along with **IA NO.: CAN 1 of 2023** is disposed of without any order as to costs.

(Debangsu Basak,J.)

14. I Agree.

(Md. Shabbar Rashidi, J.)

(AD)