

04.12.2024
Ct. No. 2
Sl. No. 17
tbsr

WPA 2583 of 2024

Ansar Sk. Alias Sk. Ansar Ali
Vs.
State of West Bengal & Ors.

Mr. Ramij Munsi
Ms. Champa Pal
....for the petitioner

Mr. Supratim Dhar
Mr. Amritalal Chatterjee
....for the State

Mr. Atarup Banerjee
Mr. Shibasish Banerjee
Mr. Rajdeep Pramanik
....for the respondent no. 10

Affidavit of service, filed in court today, is taken on record.

Mr. Ramij Munsi, learned counsel appears for the petitioner.

Mr. Supratim Dhar, learned senior counsel appears for respondent nos. 1 to 9.

Mr. Atarup Banerjee, learned counsel appears for respondent nos. 10 through virtual mode.

The petitioner complained of unauthorized construction and encroachment of PWD land at the behest of the private respondent no. 10. An order was passed under **Sub-Section (3) to Section 10 of the West Bengal Highways Act, 1964** dated **May 17, 2023, Annexure P-5 at page 26** to the writ petition. The said

order has confirmed the encroachment and unauthorized construction as alleged by the petitioner on the PWD land at the behest of the private respondent no. 10. Direction was made upon the appropriate authority for its removal.

The private respondent no. 10 being aggrieved by the said order had preferred statutory appeal before the appellate authority under **Sub-Section (4) to Section 10** of the said **1964 Act**. By an order dated **October 11, 2023, Annexure P-6 at page 31** to the writ petition, the appeal was disposed of upholding the said order dated May 17, 2023 passed by the jurisdictional SDO.

Assailing the said appellate order dated October 11, 2023, the private respondent filed a writ petition being **WPA 25973 of 2023** where this petitioner was not at all impleaded as a party respondent. By an order dated **November 28, 2023, Annexure P-7 at page 32** to the writ petition, the writ petition was dismissed by a Co-ordinate Bench. The private respondent no. 10 being aggrieved thereby have preferred an appeal before the Hon'ble Division Bench which is pending but no interim order has been passed. The averments in support are available in **paragraph 18** of the writ petition.

Learned counsel appearing for the petitioner submits that there is no impediment to give effect to and

execute the said order dated May 17, 2023 passed by the jurisdictional SDO, **Annexure P-5 at page 26** to the writ petition, since the statutory appeal had upheld the same and the challenge thereto pending before the Hon'ble Division Bench of this Court where this petitioner is not a party.

Mr. Atarup Banerjee, learned counsel appearing for the private respondent no. 10 submits that the subject appeal is pending before the Division Bench and no interim order has been passed.

After considering the submissions made on behalf of the parties and upon perusal of the materials on record, this Court is of the view that, since this writ petitioner was not impleaded and a party to the writ petition WPA 25973 of 2023 through which the private respondent had challenged the order of the appellate authority dated October 11, 2023 and consequently since the writ petitioner is not a party in the pending appeal and no interim order of stay is there, the order dated May 17, 2023 passed by the jurisdictional SDO and the appellate order dated October 11, 2023 passed by the jurisdictional ADM have achieved finality in so far as this writ petitioner is concerned. Therefore, there cannot be any impediment to execute the said order dated May 17, 2023 passed by the jurisdictional SDO

being upheld by the appellate authority in its order dated October 11, 2023.

In view of the foregoing discussions and reasons, the respondent no. 5, 6, 7 and 9 are directed to execute, implement and give an immediate effect to the said order dated **May 17, 2023** passed by the jurisdictional SDO, **Annexure P-5 at page 26** to the writ petition positively within a period of **three days** from the date of communication of this order.

Accordingly, this writ petition, **WPA 2583 of 2024** stands **allowed**, without any order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)