

March 22, 2024
(13) ARDR

WPA 4005 of 2023

Ajema Bibi
Vs.
The State of West Bengal & Ors.

Adv. Joy Chakraborty,
Adv. Ipsita Ghosh,
...for the petitioner.
Adv. Md. Yusuf Ali,
...for the respondent no.11.
Adv. Soumitra Bandyopadhyay,
Adv. Srikanata Paul,
...for the State.

Report in the form of affidavit submitted on behalf of
the State respondents is taken on record.

Heard learned counsels for the parties.

The petitioner has assailed the order passed by the
District Magistrate and Collector, Murshidabad under
Section 10(4) of the West Bengal Highways Act, 1964 on
31st January, 2023 directing the Sub-Divisional Magistrate,
Domkal Sub-Division, Murshidabad to remove the illegal
encroachment and unauthorised construction on PWD
land and restore the same to its original condition.

The petitioner has submitted that out of 34 decimals
of land in L.R. Dag no. 1495, R.S. Dag no. 1147, 22
decimals were acquired by the State and the remaining 12
decimals retained by the petitioner as her *raiyati* land. The
record of rights erroneously recorded that 2 decimals of
land was incorporated as *raiyati* land of the petitioner
instead of 12 decimals. The petitioner has applied for
correction of record of rights which is still pending. The

petitioner is in occupation of 12 decimals of land belonging to her and has not encroached upon any portion of the PWD land.

The contention of the petitioner is conceded to by the State respondents. Placing reliance on the report filed by the Additional Land Acquisition Officer, Murshidabad, learned counsel for the State respondents submits that the petitioner is in occupation of her *raiya* land comprising 12 decimals and the remaining 22 decimals have been acquired by the Government.

In view of the above, this Court is inclined to hold that the petitioner cannot be said to be an encroacher/illegal occupier in respect of the PWD land or any portion thereof. The order under Section 10(4) of the 1964 Act passed against the petitioner declaring her to be an illegal encroacher is, therefore, required to be set aside.

Accordingly, the writ petition is allowed.

The order impugned passed by the District Magistrate and Collector, Murshidabad under Section 10(4) of the West Bengal Highways Act, 1964 on 31st January, 2023 is set aside.

There shall however, be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to have been 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.)