

27.02.2024
Ct. 654
S/L-1
ab

WPA 4213 of 2024

Abdul Suban Ali Khan
-Vs-
The State of West Bengal & Ors.

Mr. Partha Sarathi Roy,
Mr. Lakshminath Bhattacharya
... for the petitioner

Mr. Md. Farhaduddin,
Mr. Aritra Ghosh
... for the State

Mr. Tarun Kumar Das,
Mr. Dilip Kumar Samanta
... for the respondent no. 11

Affidavit of service filed on behalf of the petitioner
is taken on record.

Mr. Partha Pratim Roy, learned advocate for the
petitioner seeks leave to file supplementary affidavit.

Leave is granted.

Supplementary affidavit filed on behalf of the
petitioner is taken on record.

Copy served.

This writ petition has been filed challenging the
order dated 27th December, 2023 passed by the Sub-
Divisional Officer, Kakdwip, 24 Parganas (South) being
the respondent no. 6 herein.

The brief fact of the case is that the respondent
no. 11, Tapan Das filed a writ petition being WPA 7839
of 2022 alleging of blockage to his egress and ingress of
his residential house at L.R. Dag No. 276 of Mouza-

Rajnagar Srinathgram under Kakdwip Police Station by one Gulsan Khan and Anarul Seikh. In the aforesaid writ petition, following direction was passed upon the Sub-Divisional Officer, Kakdwip, 24 Parganas (South) being the respondent no. 6 herein, which is reproduced hereunder:-

“ The writ petition is accordingly disposed of directing the 13th respondent to consider the joint field verification report of the Block Land & Land Reforms Officer and in the event encroachment upon the National Highway or any portion thereof is found upon verification, the said respondent is directed to initiate proceeding in accordance with law 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 parties including the petitioner and the private respondents”.

The Sub-Divisional Officer, Kakdwip, 24 Parganas (South) being the respondent no. 6 herein, in pursuance to the aforesaid order passed in the writ petition after consideration of the joint field verification report, found Anarul Sk., Abdul Suban Ali Khan (petitioner herein) and Sushma Pal as the encroachers and it ordered National Highway Authority to take immediate steps for removal of encroachment in front of Plot No. LR 276 in Mouza-Rajnagar Srinathgram, J.L. No. 43 under Namkhana Block. Being aggrieved by such order of respondent no.6, the petitioner has preferred the present writ petition.

Mr. Partha Pratim Roy, learned advocate for the petitioner submits that as per Section 26(2) of the Control of National Highways (Land and Traffic) Act, 2002, the officer authorized under the Act can take steps for removal of unauthorized occupation. The Sub-Divisional Officer, Kakdwip, 24 Parganas (South) is not authorized under the Act to take steps for removal of encroachment. Therefore, the order passed by the Sub-Divisional Officer, Kakdwip, 24 Parganas (South) being the respondent no. 6 herein is beyond his jurisdiction and is liable to be set aside.

In reply to the contentions raised on behalf of the petitioner, Mr. Md. Farhaduddin, learned advocate for the State-respondents submits that by the present writ petition, the petitioner has virtually challenged the order passed in WPA 7839 of 2022 on the grounds, which should have been assailed by way of appeal. The order passed by the coordinate Bench in WPA 7839 of 2022 is still in subsistence and in compliance thereto, the concerned State authority has acted, which cannot be intercepted in the present writ petition. Furthermore, he indicates that the order was passed by the concerned Sub-Divisional Officer after notifying all interested parties including the petitioner. Thus, such order does not call for interference.

Mr. Tarun Kumar Das, learned advocate for the respondent no. 11 submits that the Sub-Divisional Officer, Kakdwip, 24 Parganas (South) after considering

the field enquiry report of the Block Land & Land Reforms Officer, Namkhana and also upon hearing the interested parties including the petitioner, has directed the National Highways Authority to take steps for removal of the encroachment. The aforesaid order of the Sub-Divisional Officer, Kakdwip, 24 Parganas (South) has been passed in compliance with the order passed in WPA 7839 of 2022 by this Hon'ble Court. Thus, there is no illegality in the impugned order of the Sub-Divisional Officer and, hence, the writ petition should be dismissed.

From the materials on record, it is evident that the Sub-Divisional Officer, Kakdwip, 24 Parganas (South) being the respondent no. 6 has passed the impugned order dated 27th December, 2023 in compliance with the order passed in WPA 7839 of 2022. Admittedly, the order passed in WPA 7839 of 2022 has not been assailed in appeal. The Sub-Divisional Officer, Kakdwip, 24 Parganas (South) being the respondent no. 6 herein before passing such order notified all the interested parties including the petitioner. The impugned order has been passed holding Anarul Sk., Abdul Suban Ali Khan (petitioner herein) and Sushma Pal as encroachers upon considering the joint field verification report as directed by this Court, enquiry report of the Block Land & Land Reforms Officer, Namkhana and hearing all the interested parties. It is also pertinent to note that during hearing, the petitioner

and one other have admitted of encroachment of the land of PWD (roads) by them before the Sub-Divisional Officer, Kakdwip, 24 Parganas (South). Mr. Roy, learned advocate referring to Section 26(2) of the Control of National Highways (Land and Traffic) Act, 2002 urged that the Sub-Divisional Officer is not authorized under the Act to take steps for removal. At the first instance, it is noted that the Sub-Divisional Officer has acted in terms of order of this Court passed in WPA 7839 of 2022. That apart, it has also directed the National Highways Authority to take immediate steps for removal of the encroachment. Therefore, the aforesaid argument on behalf of the petitioner does not hold good.

Such being the position, this Court does not find any illegality in the order dated 27th December, 2023 passed by the Sub-Divisional Officer, Kakdwip, 24 Parganas (South) being the respondent no. 6 herein in Misc Case No. SDO/Kakdwip/05/2023.

In view of the above, the writ petition being **WPA 4213 of 2024** stands dismissed.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(**Bivas Pattanayak, J.**)