

09.01.2024

Ct. no.654

Sl. No.24

sn

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

W.P.A. 4575 of 2023

Madhusudan Giri & Ors.

Vs.

State of West Bengal & Ors.

Mr. Sukanta Das

... for the petitioners

Mr. Dilip Kumar Maiti

..for the respdt.nos.11-13

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

This writ petition has been filed challenging the notice dated 19th January, 2023 of the Sub-Divisional Magistrate, Egra, Purba Medinipur, respondent no. 8 for appearing in a proceeding under Section 10(3) of the West Bengal Highways Act, 1964 and notice dated 15th February, 2023 issued by the Assistant Engineer, PWD, Contai Sub-division, the respondent no.5.

It is contended by the petitioners, *inter alia*, that they are the joint owners and occupiers in respect of the land comprised in plot nos.1910 and 1911, J.L. no.136, under different khatians within mouza Khejurda, Police Station Egra, District Purba Medinipur and the nature of the land is pond and bank. The petitioners' aforesaid land is situated adjacent to the Egra to Contai Pitch road. In

the year 2009 apprehending dispossession, the petitioners filed a title suit being T.S. no. 62 of 2009 seeking for declaration of their possessory title over the aforesaid land before the learned Civil Judge (Junior Division), 2nd Court, Contai and the suit is still pending for final adjudication. On 4th November, 2022, in WPA 2818 of 2022, submissions were made that plot has been demarcated in compliance to order of the Court and that the Assistant Engineer, PWD, Contai Sub-division, the respondent no.5, has issued notice of hearing upon the parties and requested them to appear before the authority with their deeds and documents on 17th November, 2022. Since nothing remained to be adjudicated in the aforesaid writ petition, the same was disposed of. On 12th December, 2022, notices were issued to the parties under Section 10(1) of the West Bengal Highways Act, 1964 by Assistant Engineer, PWD, Contai, Sub-Division. Thereafter, on 19th January, 2023, hearing notice was issued by the Sub-Divisional Magistrate & Sub-Divisional Officer Egra, Purba Mednipur, in respect of proceeding under Section 10(3) of the West Bengal Highways Act, 1964. Thereafter, by notice dated 15th February, 2023, the Assistant Engineer, PWD, Contai Sub-division, the respondent no.5 issued notice to the petitioners for removal of unauthorised construction over PWD land in front of plot nos.1910 and 1911, J.L. no.136, under different khatian within mouza Khejurda, Police Station Egra, District Purba Medinipur within a stipulated period.

Being aggrieved by such notice, the petitioners have preferred the present writ petition.

Mr. Sukanta Das, learned advocate for the petitioners submits that the demarcation of the land has not been made following LA map and only the local map has been taken into consideration to ascertain the unauthorised construction, if any, by the petitioners. Such demarcation of land made by the said authorities is incorrect and not in accordance with law. In the light of his aforesaid submissions, he prays that the notice dated 15th February, 2023 issued by the respondent no.5 should be cancelled/withdrawn.

Mr. Dilip Kumar Maiti, learned advocate for the private respondent nos. 11 to 13 submits that the order passed by the Sub-Divisional Magistrate, under Section 10(3) of the West Bengal Highways Act, 1964 is an appealable order in terms of Section 10(4) of the said Act. In the aforesaid backdrop, he submits that the writ petition is liable to be dismissed. He files the order-sheet dated 8th February, 2023 of the Sub-Divisional Magistrate, Egra respondent no.8, which is taken on record.

Despite service of notice, none appears on behalf of the State-respondents.

In order to appreciate the contentions raised by the private respondent nos. 11 to 13, it would be appropriate to reproduce the relevant provisions under Section 10(3)

and 10(4) of the West Bengal Highways Act, 1964 as hereunder.

“(3) Such Magistrate may, on receiving the application and after notice to the person responsible for the encroachment and on taking such evidence, if any, as he thinks fit, make an order authorising the authority or officer to recover possession and remove the encroachment in question and may, if necessary, direct the police to assist in the enforcement of the order.

(4) If the persons responsible for the encroachment is aggrieved by the order of the Magistrate under sub-section (3) he may, within fifteen days from the date of the Magistrate’s order, appeal to the District Magistrate. The District Magistrate, shall, after hearing the parties, make an order affirming, modifying or setting aside the order made under sub-section (3).”

From the aforesaid provisions, it manifest that if the persons responsible for the encroachment is aggrieved by the order of the Magistrate under sub-section (3) of Section 10 he may, within fifteen days from the date of the Magistrate’s order, appeal to the District Magistrate. It is not in dispute that the order dated 8th February, 2023, on the basis of which notice dated 15th February, 2023 was issued for removal of unauthorised construction, is passed by the Sub-Divisional Magistrate, Egra being the respondent no.8 in a proceeding under Section 10(3) of the said Act. It goes without saying that such order passed by the Sub-Divisional Magistrate, Egra, the respondent no.8, in a proceeding under Section 10(3) of the said Act, 1964 is an appealable order under Section 10(4) of the said Act. Since the order passed under Section 10(3) of the Said Act is appealable, hence

the writ petition is liable to be dismissed being not maintainable.

In view of the above discussions, this writ petition being no. **W.P.A. 4575 of 2023** stands dismissed.

All connected applications, if any, also stand disposed of.

Interim order, if any, stands vacated.

There will be, however, no order as to costs.

Liberty is granted to the petitioners to approach the appropriate forum of appeal, if so advised.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)