

ML 39
04.09.2024
Court. No. 9
GB

W.P.A. 7737 of 2024

Niranjana Bera
Vs.
The State of West Bengal & Ors.

Ms. Sabera Khatun

...for the Petitioner.

*Mr. Susanta Pal,
Mr. Prabir Kumar Ray*

...for the State.

*Mr. Siddhartha Banerjee,
Mr. Balaram Pandit,
Mr. Amit Nath*

...for the Respondent Nos.7 to 12.

1. The Court does not find any reason to interfere with the order dated February 28, 2024, passed by the District Magistrate, Purba Medinipur. The District Magistrate, Purba Medinipur was directed by a Division Bench of this Court to dispose of the appeal, pending under Section 10(4) of the West Bengal Highways Act, 1964.
2. The learned advocate for the petitioner has challenged the order on the ground that the District Magistrate should have limited his adjudication to the appeal and not reopened the entire issue.
3. It is contended that unauthorized encroachment and construction on government land were detected by the Sub-Divisional Magistrate, Egra and several rounds of litigation resulted in failure of the encroachers to substantiate their claim over the land. Thus, the District Magistrate should not have passed the order

impugned by directing the matter to be decided from the initial stage.

4. From the order impugned in the appeal, the District Magistrate found that the authority had not come to a specific finding that there had been encroachment on government land. The details of encroachment on government land had not been mentioned in the order. Copy of the field enquiry report along with the sketch map, which was relied on by the Sub-Divisional Magistrate, Egra was not handed over to the parties at any point of time. Thus, the order dated August 5, 2022, passed by the Sub-Divisional Magistrate, Egra was liable to be set aside as per the appellate authority. The relevant portion of the decision is quoted below:-

“It is observed that while deciding a proceeding under West Bengal Highway Act, 1964 the Authority has not come to the findings that encroached land is a government land and has not mentioned the specific details of the encroached land in the said proceeding. No copy of field enquiry report alongwith sketch map which was relied on by the Ld. SDM, Egra was handed over to both parties at any point of time. So the order dated 05.08.2022 passed by SDM, Egra is liable to be set aside for the above reasons.”

5. The authority was of the view that the eviction case no.493 of 2022 under Section 3 of the West Bengal Highways Act, 1964 deserved to be set aside. The authority did not stop at that, but directed that the complaint of the petitioner with regard to the

encroachment should be decided afresh and passed the following order:-

“The Assistant Engineer, Contai Highway Sub-Division, PDW (Roads) is given liberty to initiate fresh proceeding u/s 10(1) and 10(2) of W.B. Highway Act, 1964 mentioning the specific details of encroached govt land within 7 (seven) days from receipt of this order and Sub-Divisional Magistrate, egra is directed to dispose of the application, if submitted by Assistant Engineer, Contai Highway Sub-Division, PWD (Road) by initiating a proceeding u/s 10(3) of W.B. Highway Act, 1964 in the light of observations made above and considering the documents if adduced by any party and upon affording reasonable opportunity of hearing to both parties in accordance with law.”

6. Under such circumstances, this Court does not find any reason to interfere with the order impugned. The order impugned is reasoned. There are factual findings that the extent of encroachment on government land, the identity of the government land etc. were not recorded in the order of the Sub-Divisional Magistrate and the field enquiry report relied upon by the authority was not supplied to the parties. On these grounds, the order impugned was passed by setting aside the eviction case with liberty to initiate a fresh proceeding against the respondent nos.7 to 12.
7. The allegations in the writ petition are deemed to be denied. The authority empowered by law shall independently consider the entire matter afresh upon following the principles of natural justice, within a

period of four months from date, as per the direction of the District Magistrate.

8. Accordingly, the writ petition is disposed of.
9. However, there will be no order as to costs.
10. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)