

18 27.02.2024
rkd Ct.15

W.P.A. 5755 of 2018

Arko Roy

-vs-

State of West Bengal & Ors.

Mr. Rajendra Banerjee,
Mr. Subhendu Roy Chowdhury,
Mr. Joy Chakraborty,
Mr. Sandip Dinda,
Mr. Ranjit Malakar

....for the petitioner.

Mr. Samrat Sen,
Mr. Deepnath Choudhury,
Mr. Anand Farmania,
Mr. Manoj Kumar Mondal

....for the State.

The writ petition is taken up for final consideration in presence of the learned advocates representing the petitioner and the State respondents.

The learned advocate for the petitioner alleges encroachment of highway for which proceeding contemplated under Section 10 of the West Bengal Highways Act, 1964 is required to be initiated as it has been contended on behalf of the petitioner.

However, on perusal of Section 10 it appears that such proceeding can only be initiated by the Highway Authority or an Authorized Officer and in case of initiation of proceeding under Section 10 Executive Magistrate is the first

authority to take decision relating to such encroachment.

However, in the present case there is no notice issued under Section 10 by the Highway Authority or any Authorized Officer; therefore initiation of proceeding under Section 10 is found to be impermissible.

Since an allegation has been made by the petitioner that there has been encroachment on the highway impacting ingress and egress to his residence, leave is granted to the petitioner to make a composite representation to the District Magistrate, South 24 Parganas within a period of fortnight from date.

If such representation is made before the District Magistrate the same shall be considered by the District Magistrate within eight weeks thereafter by granting opportunity of hearing to the petitioner and other interested parties and a reasoned decision to be taken on such representation.

Such decision of the District Magistrate shall be communicated to the petitioner within one week thereafter.

Leave is granted to the petitioner to amend the cause title of this writ petition and add District

Magistrate, South 24 Parganas as additional respondents in course of this day.

However, service of notice upon the additional respondent stands dispensed with since State respondents are represented by learned advocates.

With the aforesaid direction, the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)