

15
27.09.2024
Court No. **2**
D.Hira

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A. 10279 of 2024

**Rafijuddin Halsana & Anr.
-versus
The State of West Bengal & Ors.**

**Mr. Sarwar Jahan,
Ms. Tapati Sarkar.
... for the petitioners**

**Mr. Ayan Banerjee,
Mr. Amritlal Chatterjee.
... for the respondent
Nos. 1 to 10**

Affidavit-of-service filed in Court today, is taken on record.

Mr. Sarwar Jahan, learned counsel is appearing for the petitioner.

Mr. Amritlal Chatterjee, learned counsel led by Mr. Ayan Banerjee, learned counsel appears for the respondent nos. 1 to 10.

Respondent no. 11 is not represented, despite notice.

The private respondent no. 12 is also not represented, despite notice.

The petitioners complain of alleged unauthorized construction and encroachment upon public land.

The cause previously travelled a Writ Court when by an order dated June 13, 2023 a Coordinate Bench in

WPA No. 2183 of 2023 directed the appropriate P.W.D. authority to consider the case of the petitioner, **Annexure P-4 at page 23 to the writ petition.**

When the issue was taken up for consideration by the P.W.D. authority dispute arose at the end of the State authority that the land whether belongs to P.W.D. or a public road on the State land.

In this regard, learned counsel for the petitioners has drawn attention of this Court to the communication dated December 1, 2023 and February 28, 2024, **Annexures P-5 and P-7 at pages 29 and 36 to the writ petition** respectively.

Considering above, the respondent no. 4 upon issuing a prior notice of hearing to the petitioners, private respondent no. 12 and respondent no. 9 after granting them an opportunity of hearing shall first decide whether the subject encroachment is under the **West Bengal Highways Act, 1964** or **The West Bengal Public Land (Eviction Of Unauthorized Occupants) Act 1962**, by passing a reasoned order in accordance with law.

This exercise shall be carried on by the respondent no. 4 within a period of **six (6) weeks** from the date of communication of this order.

The reasoned order then shall be communicated to the petitioners, the private respondents and the appropriate authority under either of the said two Acts

who shall have to take steps to decide on the encroachment and the removal thereof in accordance with law.

Such appropriate authority then shall take all necessary and consequential steps upon due notice to the petitioners and the private respondents to ascertain the encroachment and if necessary, the removal thereof strictly in accordance with law positively within a period of **three (3) weeks** from the date of communication of the decision of the respondent no. 4.

It is made clear that this Court has not gone into the merits of the writ petition and the petitioners and the private respondents shall be at liberty to urge whatever points they wish to urge by relying upon whatever records and documents they wish to rely upon before the respondent no. 4 and such appropriate authority before whom the dispute shall be referred.

It is made clear that this order shall not create any right or equity at any stage in favour of the petitioners and the private respondents, if they do not succeed to their rival contentions strictly in accordance with law.

Since no affidavits are called for, the allegations made in this writ petition, are deemed not to have been admitted by the respondents.

With the above observations and directions, this writ petition being **WPA No. 10279 of 2024** stands **disposed of**, without any order as to costs.

Urgent Photostat certified copy of this order duly downloaded from the official website of this Court upon compliance all legal formalities.

(Aniruddha Roy, J.)