

Form No. J.(2)
Item No.13

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 05.08.2024

DELIVERED ON: 05.08.2024

CORAM:

**THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**M.A.T. 948 of 2024
With
I.A.No. CAN 1 of 2024
With
CAN 2 of 2024**

**Joydeb Bera @ Joydev Bera & Anr.
Versus
The State of West Bengal & Ors.**

Appearance:-

**Mr. Biswaroop Biswas
Mr. Nirmalendu Patra
Mr. Debnarayan Patra
Mr. Arijit Bera**

.....For the Appellants

**Mr. Somnath Ganguli, Ld. AGP
Mr. Balarko Sen
Mrs. Kalpita Paul**

.....For the State

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

In Re.: I.A.No. CAN 1 of 2024

1. We have heard Mr. Biswaroop Biswas, learned advocate appearing for the appellants and Mr. Somnath Ganguli, learned advocate appearing for the State.
2. There is delay of 178 days in filing the appeal. We have perused the affidavit filed in support of the petition and we find that sufficient cause has been shown for not being able to prefer the appeal within the period of limitation.
3. I.A.No. CAN 1 of 2024 is allowed and the delay in filing the appeal is condoned.

In Re.: M.A.T. 948 of 2024

4. This intra-Court appeal by the respondent in W.P.A. 20191 of 2023 is directed against the order dated 19th October, 2023, by which the writ petition filed by the respondent herein viz. Animesh Maiti was disposed of by directing the authorities to take immediate steps with regard to certain encroachments.
5. The order and direction issued by the learned writ court has worked itself out inasmuch as the authorities viz. the Public Works (Roads) Directorate has already taken action and notice under Section 10(1) of the West Bengal Highways Act, 1964 dated 16th April, 2024 has been issued to the appellants as well as four others, which include the writ petitioner, Animesh Maiti.
6. Though the learned advocate for the appellants would strenuously contend that the learned writ court could not have entertained the writ petition, since it did not have determination to do so and more particularly, when the writ petition is not a public interest litigation, this issue is not being gone into at

this juncture, for the reason that the order and direction has worked itself out and notices have been issued.

7. The learned advocate for the appellants would further contend that from the notice dated 16th April, 2024 issued under Section 10(1) of the Act, it is clear that the writ petitioner himself is an encroacher and at his behest, a direction could not have been issued.
8. It is true that if the writ petitioner himself is an encroacher, a prayer to remove the encroachment alleged to have been made by the appellants could not have been entertained at his instance. However, now the authorities have found that the writ petitioner is also an encroacher and issued notice to the writ petitioner dated 16th April, 2024.
9. Further, the learned advocate for the appellants points out that there are more than 32 shops and other establishments on either side of the road and selectively action has been taken only against 5, which include the appellants and the writ petitioner.
10. Since, the procedure under the Highways Act has already been invoked and notice under Section 10 (1) has been issued, the officer authorized under Section 10 (1) has to proceed in terms of Sub-Section 2 of Section 10 and thereafter, the Executive Magistrate should proceed in terms of Sub-Section 3 of Section 10 of the Act.
11. Since, there is an allegation that there are other establishments /shops /houses etc. on either side of the road, we direct the officer authorized under the Highways Act to conduct an inspection of the entire area and if there is any encroachment made by other persons, the same shall be dealt with under the provisions of the West Bengal Highways Act, 1964 and appropriate notices

shall be issued under Section 10 (1) of the Act. Since, the procedure under Sub-Section 2 of Section 10 of the Act has to be followed by the Highways Department, we leave it open to the appellants and the writ petitioner to raise all their defence as and when the Executive Magistrate issues notice upon an application filed by the authorized officer under the Highways Act and the concerned Executive Magistrate shall deal with the objections, which may be raised by the appellants and/or the writ petitioner or other alleged encroachers and thereafter proceed to take the independent decision in accordance with law after hearing all the parties.

12.For the above reasons, the appeal and the connected application (CAN 2 of 2024) are disposed of.

13.No costs.

14.Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)