

04.07.2024
Sl. No.15(DL)
srm

W.P.A. No. 16772 of 2024
Amit Dhara
Versus
The State of West Bengal & Ors.

Mr. Soumen Kumar Dutta,
Mr. Subham Dutta,
Mr. Sk. Sayan Uddin,
Mr. Rahul Banerjee
...for the Petitioner.

Mr. Himadri Sikhar Chakraborty,
Ms. Susnita Saha
...for the State-respondents.

Mr. Soumik Ganguli,
Mr. Dilip Kumar Sadhu,
Ms. Chandana Chakraborty
...for the Respondent Nos.9 & 10.

1. Affidavit-of-service is taken on record.
2. The petitioner submits that there is a confusion with regard to the authority of the Assistant Engineer, PWD, Kharagpur Sub-Division, in issuing the order of removal of the alleged unauthorised construction of the petitioner. The petitioner has challenged the said order on the following grounds:-
 - (a) The notice of inspection was issued by the Assistant Engineer, PWD, Kharagpur Sub-Division, who did not have any authority.

- (b) Assistant Engineer, PWD, Kharagpur Sub-Division could neither issue the notice of joint inspection nor pass the order impugned.
 - (c) The notification issued in exercise of power under Section 5 of the West Bengal Highways Act, 1964, does not notify the Assistant Engineer, PWD, Kharagpur Sub-Division as the "Highway Authority" within the meaning of Section 2(d) of the West Bengal Highways Act, 1964.
 - (d) The petitioner was not present during joint inspection and the report of joint inspection was not supplied to the petitioner.
 - (e) The petitioner was also not heard.
3. Mr. Ganguli, learned Advocate appearing on behalf of the persons who complained of such encroachment, submits that the order was passed by the Assistant Engineer, who was under the Kharagpur Division and he had the authority to decide the matter under Section 10(1) of the West Bengal Highways Act, 1964.
 4. Mr. Chakraborty, learned Advocate appearing for the State submits that the order was passed in compliance of an earlier order passed by a learned coordinate Bench of this Court in WPA No.26056 of 2023.

5. Both the learned Advocates for the respondents submit that despite notice, the petitioner did not appear either at the time of inspection or at the time of hearing. The authority was required to comply with the order of this Court in a time-bound manner and they had done so by following proper procedure.
6. As this is a case of removal of structure of the petitioner, one last opportunity is given to the petitioner to ventilate his grievance before the Executive Engineer, Kharagpur Division. In order to dispel all doubts with regard to the issue of jurisdiction of the Assistant Engineer, PWD, Kharagpur Sub-Division, the matter shall be heard by the Executive Engineer Kharagpur Division, who is also "Highway Authority" under the notification issued by the Public Works Department, Government of West Bengal.
7. The impugned order will be taken as a preliminary report and the petitioner will be supplied with the inspection report which was prepared by the Assistant Engineer, Kharagpur Sub-Division.
8. The inspection report will be supplied to the petitioner within a week from date. The petitioner will be entitled to file his response/written version to the said report, before the Executive Engineer, Kharagpur Division within a week

thereafter. The Executive Engineer, Kharagpur Division shall grant a hearing to the petitioner, the concerned Block Land and Land Reforms Officer, as also the respondent Nos.9 and 10 and pass a reasoned order. Thereafter, necessary steps shall be taken strictly in accordance with law.

9. The entire exercise by the Executive Engineer, Kharagpur Division shall be completed within a period of one month upon receipt of the petitioner's representation/written version. The time period mentioned must be complied with by the authorities and the petitioner.
10. Till such decision is taken by the Executive Engineer, Kharagpur Division, the demolition process shall be stayed. The demolition order shall be subject to the decision of the Executive Engineer, Kharagpur Division.
11. The writ petition is, thus, disposed of.
12. There shall be no order as to costs.
13. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)