

26.07.2024
Item No. 11
Crt.No.02
b.r.

WPA 18356 of 2024

Rabindranath Bhunia & Ors.
-vs-
The State of West Bengal & Ors.

Mr. Dhiraj Trivedi
Mr. Sunil Gupta
..... for the petitioners.

Mr. Ayan Chandra Roy
Mr. Sutanu Chakraborti
.... For the Resp. nos. 1 to 4.

Mr. Golam Mostafa
Mr. Tara Sankar Samanta
... for the private respondent no.9.

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

Mr. Dhiraj Trivedi, learned counsel appears for the petitioners.

Mr. Ayan Chandra Roy, learned State advocate appears on virtual mode for the respondent nos. 1 to 4.

Mr. Golam Mostafa, learned counsel appears for private respondent no.9.

The respondent no. 5 to 8 are not represented.

In terms of the prayer made on behalf of the petitioners, leave granted to the petitioners to file supplementary affidavit to disclose certain material documents, which according to the learned counsel for the petitioners are essential for adjudication of this writ

petition. Copies are served upon the appearing respondents today in Court.

The petitioners have challenged the impugned order of the appellate authority dated **June 26, 2024 at page 161** to the writ petition passed under **Sub-Section 4 to Section 10 of the West Bengal Highways Act, 1964.**

The Highways authority alleged that the petitioners are the alleged encroachers in respect of a portion of the State High Way.

Mr. Dhiraj Trivedi, learned counsel appearing for the petitioners submits that challenging the order passed by the **respondent no.6 dated December 20, 2023 at page-146** to the writ petition, the appeal was preferred. The impugned order passed in appeal mentions of a report submitted by the jurisdictional **B.L. & L.R.O., Panskura** on the basis whereof the respondent no.6 passed the order, which was ultimately affirmed by the impugned order. Learned counsel for the petitioners submits that no copy of the said report submitted by the B.L.& L.R.O. was furnished to the petitioners. He further submits that the impugned order is devoid of any finding arrived at by the appellate authority and also devoid of any reasons ascribed by the appellate authority in support of his conclusion. On

these grounds primarily, the petitioners have challenged the said impugned appellate order dated June 26, 2024,

Mr. Ayan Roy, learned State counsel appearing on virtual mode for the respondent nos. 1 to 4 submits that he has received instruction from his clients to file a report in the form of affidavit dealing with the allegations made in the writ petition. He further submits that the said impugned order is otherwise a reasoned order. Since the respondent no.6 has passed a detailed order on the basis of the report submitted by B.L. & L.R.O., the appellate authority relied thereupon and finding no wrong being there, passed the impugned order. Hence, he submits that the impugned order should not interfered with.

Mr. Golam Mostafa, learned counsel appearing for private respondent no.9 submits that by virtue of causing the encroachment on the high way land, the petitioners have caused hindrance to the free egress and ingress of the private respondents to its dwelling house. The private respondent filed a writ petition being **WPA 11356 of 2022**. In the said writ petition an order was passed by co-ordinate Bench on November 22, 2023 in pursuance whereof, the respondent no.6 passed its order for removal of the alleged encroachment caused by the petitioners. The B.L. & L.R.O. submitted its report on December 18, 2023. He further submits that copies

of the report were served upon all the relevant parties including the petitioners. He submits that the impugned order should not be interfered with.

After considering the rival contentions of the parties and upon perusal of the materials on record, this Court first reiterates the settled law while exercising its power under judicial review once again. While scrutinizing an order passed by a statutory appellate authority in exercise of its power under judicial review, this Constitutional Court has a very limited authority. This Court is not the appellate Court who can sit on appeal over the impugned order. Unless there is a glaring perversity and breach of the fundamental principle of law apparent on the face of the said impugned order, this writ Court shall refrain itself from interfering with the impugned order.

The relevant part from the said impugned order dated **June 26, 2024** is quoted below:-

“ Heard all the parties present in the hearing. The case is admitted by condonation of delay in filing and will be adjudicated on merit.

Perused the order dated 20.12.2023 passed by Subg-Divisional Magistrate, Tamluk, in the proceeding bearing No. 28/2022 U/S 10(3) of the West Bengal Highways Act, 1964. As per provision of the said Act the Assistant Engineer, Panskura Highway Sub-Division, PWD(Roads) issued notice U.s 10(1) of the said Act after being

satisfied with the report of BL & LRO, Panskura-I that there are encroachment on govt land bearing Plot No. 382 and 384 in front of raiyati Plot No. 385, Khatian No. 538 of Mouza Dakshin Gopalpur, JL No.84, PS-Panskura, Purba Medinipur by the side of Mechogram Gopalpur Road.

It is ordered that Hon'ble High Court, Calcutta also passed order dated 14.09.2023 in connection with WA 26087 of 2022 directing the petitioners i.e. the encroachers to participate in the proceeding subsequent to Section 10(1) of the said Act in accordance with law.

It is also known that as per direction of the Hon'ble High Court, Calcutta in WPA No. 11356 of 2022, the Assistant Engineer, Panskura Highway Sub-Division, PWD(Roads) appealed to the Sub-Divisional Magistrate, Tamluk, Purba Medinipur for passing necessary order for removal of encroachment of government land.

On receiving the petition U/S 10(2) of the said Act, the Sub-Divisional Magistrate, Tamluk passed appropriate order after being satisfied that there was encroachment on government land, following the statutory mandate under the said Act.

Hence, considering the facts and circumstances above, I could not find any cogent reason to interfere with the impugned order of Sub-Divisional Magistrate, Tamluk.

Hence, it is ordered that the order dated 20.22.2023 passed by Sub-Divisional Magistrate, Tamluk in the proceeding no.28/2022 U/S 10(3) of West Bengal Highways Act, 1964 is upheld and directed for immediate compliance.

Thus, the instant proceeding is disposed of.”

Upon a close scrutiny of the said impugned order dated **June 26, 2024**, it appears to this Court that, the appellate authority has not ascribed any reason in support of its conclusion reached in appeal after hearing the parties. There is no independent finding of the appellate authority in the said impugned order. The appellate authority proceeded only on the basis of the finding arrived at by the respondent no.6. When the finding and conclusion of the respondent no.6 was under scrutiny before the appellate authority, it was the duty of the appellate authority to come to its own finding with reasons and then to arrive at its own conclusion. In absence of such exercise, as apparent on the face of the impugned order, the appellate authority has failed to exercise its discretion and jurisdiction, as it is required to be exercised under the statute in accordance with law. The appellate authority has not recorded the submissions made on behalf of the petitioners and did not deal with it. When an appeal has been preferred, it was the duty and obligation of the appellate authority to deal with the contentions of all the parties and then come to its own conclusion with its own finding with reasons. Such exercise of the appellate authority is also absent on the face of the impugned order.

In view of the above, this Court is of the firm opinion that, the decision making process of the appellate authority while passing the said impugned order dated June 26, 2024 suffers from serious infirmity.

In so far as, the submissions made on behalf of the learned State Counsel, Mr, Ayan Chandra Roy, that his clients shall file a report in the form of affidavit, this Court is of the firm view that, the encroachment has been alleged on State Highways and having discovering the infirmity on the face of the impugned order, if the operation of the said impugned order is stayed and parties are directed to file affidavits, no fruitful purpose will be served save an except keeping the matter pending for long and if ultimately it is found that encroachment has actually been there, then such encroachment will be allowed to remain on the State Highway until the writ petition is disposed of. This Court in exercise of its equitable jurisdiction should not allow the same. On the other hand, this Court thinks fit that this impugned order should be set aside and the appeal shall be decided afresh within a stipulated period.

In view of the foregoing reasons and discussions, the impugned order dated **June 26, 2024** stands **set aside** and **quashed**. Accordingly, all consequential steps

following the said impugned order dated **June 26, 2024** also stand **set aside** and **quashed**.

The appellate authority, i.e. **respondent no.5** shall re-visit the issue pending in the appeal after issuing a prior notice to the parties to the appeal and then shall dispose of the appeal after affording opportunity of hearing to the parties to the appeal and by passing a reasoned order in accordance with law.

The **respondent no.5** shall dispose of the appeal positively within a period of **four weeks** from the date of communication of this order.

It is further made clear that, if it appears from record that the report of B.L & L.R.O was not furnished to the petitioners and the other parties to the appeal, the same shall be furnished forthwith to the petitioners and the other parties to the appeal before hearing of the appeal shall commence.

It is made clear that, this Court has not gone into the merits of the rival contentions of the parties and the parties shall be at liberty to urge all their respective points in the appeal before the **respondent no.5** but the same shall not travel beyond the scope of the appeal on board before the respondent no.5.

It is further made clear that this order shall not create any right or equity in favour of any of the parties herein. The **respondent no.5** shall decide the appeal by

applying its independent mind and without being influenced by any observation made by this Court and shall dispose of the appeal strictly in accordance with law.

The petitioners shall communicate copy of this order to all the respondents.

Since affidavits are not 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, **WPA 18356 of 2024** stands **disposed of**, without any order as to costs.

(Aniruddha Roy, J.)