

ML 15
03.09.2024
Court. No. 9
GB

W.P.A. 19372 of 2024

Sk. Nekbar Ali & Ors.
Vs.
The State of West Bengal & Ors.

*Mr. Imtiaz Ahmed,
Mrs. Ghazala Firdaus,
Mr. Sk. Saifullah,
Mr. Debopam Roy,
Mr. Mithun Mondal,
Mr. Md. Arsalan*

...for the Petitioners.

*Mr. Nirmal Kumar Manna,
Mr. Chandan Chakraborty*

...for the State.

*Mr. Sayan Datta,
Mr. Subhajit Chowdhury*

...for the Respondent No.9.

1. At this stage, the Assistant Engineer, Uluberia Highway Sub-Division, Public Works (Road) Directorate cannot proceed with the notice against the petitioners. The notice dated July 16, 2024 was issued for removal of encroachment under Section 10(1) of the West Bengal Highways Act, 1964.
2. It appears that a civil suit has been filed in respect of the plot of land in question. An ad interim order has been passed directing both the parties to maintain status quo in respect of the nature, character and possession of the 'B' schedule property, in Title Suit No.179 of 2022. The 'B' schedule property has been delineated as a strip of land on the Western side of 'A' schedule property measuring about 5 Cottahs, on which Gadiara Shyampur Metal Road exists as also

the left of portion the adjoining East of Gadiara Shyampur Metal Road including lands belonging to the P.W.D.

3. On a perusal of the application for injunction filed in the suit, it appears that the subject matter in this writ petition pertains to more or less the same area which is the subject matter of the suit. The respondent no.9 filed the suit against the petitioners restraining them from causing any obstruction or construction on 'B' schedule property as the said property connects the petitioners' premises to the main road.
4. The learned Civil Judge, upon consideration of the prayer for ad interim injunction found that the respondent No.9 had been able to make out a, prima facie, case and the balance of convenience and inconvenience would be in favour of granting an order of status quo. The learned Civil Court recorded the contention of the respondent No.9 that 'B' schedule property served as a passage for the said respondent to reach his land.
5. As an order of civil court subsists, this Court cannot permit the highway authorities to continue to take steps for demolition or removal of the encroachment on the basis of the notice dated July 16, 2024. The said notice will be kept in abeyance. It is true that the P.W.D. authorities have found that the encroachment is on the P.W.D. land. The P.W.D. authorities could

have taken steps, had the suit and the interim order not been pending, and the status quo with regard to possession had not been granted. The P.W.D. authorities cannot disobey such order even if there is encroachment on P.W.D. land.

6. Under such circumstances, the respondent no.9 is at liberty to take such steps as he may be advised, so that the parallel proceedings may not continue.
7. In the event, the suit is withdrawn or any other order is passed by the learned civil court under the changed circumstances, the Highways Division, P.W.D. shall resume jurisdiction over the matter. Till the ad interim order of status quo subsists, neither the State nor any other authority can take steps against the alleged encroachment. Further steps may be taken by the PWD upon intimating the parties and only after the order of status quo is either vacated or varied or modified.
8. Accordingly, the writ petition is disposed of.
9. However, there will be no order as to costs.
10. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)