

02.08.2024
Ct. No. 2
Sl. No. 10
tbsr

WPA 19504 of 2024

**Sk. Najimuddin & Ors.
Vs.
The State of West Bengal & Ors.**

Mr. Uday Narayan Betal
Mr. Bhaskar Hutait
Mr. Mrignaka Patra
....for the petitioners

Mr. T. M. Siddiqui
Ms. Munmun Ganguly
....for the State

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

Mr. Uday Narayan Betal, learned counsel
appears for the petitioners.

Mr. T.M. Siddiqui, learned State counsel
appears for the respondents.

Through this writ petition, the petitioners have
challenged the impugned notice dated **July 18, 2024,**
Annexure P-4 at page 32 to the writ petition issued
by the respondent no. 5 in exercise of its power under
Section 10 of the West Bengal Highways Act, 1964
(for short 'the Highways Act') .

Learned counsel appearing for the petitioners
relying upon the document, **Annexure P-1 at page 16**
to the writ petition submits that, the petitioners are
the *bona fide* owners and in occupation of the subject

land mentioned in the said impugned notice. The petitioners also rely upon the revenue document, **Annexure P-2 at page 17** to the writ petition showing taxes in respect of the subject land are regularly being paid by the petitioners. The electricity bills also relied upon showing the continuous occupation of the petitioners on the subject land. The petitioners claim ownership in respect of such land. The petitioners contend that without initiation of any land acquisition proceeding and without the subject land being vested with the State, the said Highway authorities have purported issue the said impugned notification in respect of the said land and thereby threatened the petitioners of dispossession from their land.

Learned counsel for the petitioners further submits that, the subject land is not a highway land and is a district way and therefore, none of the provisions under the said 1964 Act are applicable. Thus, the impugned notice dated July 18, 2024 issued in exercise of power under Section 10 of the said 1964 Act is only without jurisdiction and liable to be set aside.

Learned State counsel, Mr. Siddiqui submits that, this is a premature writ petition as remedies are available under Section 10 of the 1964 Act itself. He submits that, jurisdictional Executive Magistrate is the

appropriate authority to hear the grievance of the petitioner canvassed in this writ petition, in the event the Highway authority applies before the jurisdictional Executive Magistrate, if the petitioners fail to handover possession of the land.

In the light of the above, Mr. Siddiqui prays for dismissal of this writ petition at the threshold.

After considering the rival contentions of the parties and upon perusal of the materials on record and on reading of the provisions laid down under Section 10 of the 1964 Act, it appears to this Court that, after serving a notice under sub-Section (1) to Section 10 of the 1964 Act, if the person in alleged unauthorized occupation does not vacate the plot then it is the statutory obligation of the Highway authority to apply before the jurisdictional Executive Magistrate under sub-Section (2) to Section 10 of the 1964 Act. If such an application is made by the Highway authorities then the jurisdictional Executive Magistrate shall take further steps strictly in compliance of sub-Section (3) and sub-Section (4) to Section 10 of the 1964 Act. In the event, any such provision is breached, there shall be a miscarriage of justice and the process would be considered as wrongful and illegal.

In the light of the above provisions laid down under Section 10 of the 1964 Act on the facts of the instant writ petition, if the petitioners fail to handover the subject plot within the time schedule framed under the said notice dated July 18, 2024 then the Highway authority shall have no other option but to take recourse to sub-Section (2) to Section 10 of the 1964 Act and the jurisdictional Executive Magistrate then shall proceed in accordance with law.

It is made clear that, this Court has not gone into the merits of the rival claims of the parties as recorded above, the parties 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 jurisdictional Executive Magistrate, in the event, an application is filed by the Highway authority before it.

It is needless to mention that, the jurisdictional Executive Magistrate shall afford opportunity of hearing to the parties before it and then shall come a reasonable conclusion of the proceeding by passing a reasoned order.

In the event, such an application is filed by the Highway authorities, the jurisdictional Executive Magistrate shall issue a prior notice upon the writ petitioners and then shall proceed with the hearing

and shall conclude the same as expeditiously as possible in accordance with law as the matter relates to public interest.

It is further made clear that, this order shall not create any right or equity in favour of either of the parties and the jurisdictional Magistrate shall proceed independently in accordance with law and without being influenced by any observation, if made by this Court.

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 19504 of 2024** stands **disposed of**, without any order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)