

Court No. 2
11.12.2024
(Item No. 22 &
23)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side
W.P.A. 13064 of 2024

Smt. Durga Jana
VS
The Union of India & Ors.

With

W.P.A. 20738 of 2024

Sri Srikanta Ghosh
VS
The Union of India & Ors.

Mr. Salil Kumar Maiti
Ms. Pinki Saha
Ms. Dolan Samanta
.... For the petitioner in
WPA 13064 of 2024 and
For the respondent No. 8
in WPA 20738 of 2024
Mr. Yudhisthir Maity
... for the petitioner in
W.P.A. 20738 of 2024 and
For respondent Nos. 8 in
W.P.A. 13064 of 2024
Ms. Paramita Banerjee
Mr. Sayan Dey
.... For respondent Nos. 4 & 5/NHAI
in Both writ petitions

Mr. Salil Kumar Maiti, learned advocate
appears for the petitioner in **W.P.A. 13064 of 2024**
(for short, the first writ petition) and private
respondent No. 8 in the second writ petition as
described hereinafter.

Mr. Sayan Dey, learned counsel appears for
respondent No. 4 and 5, the National Highway
Authority in both the writ petitions.

Mr. Yudhisthir Maity, learned advocate appears for private respondent No. 8 in the first writ petition and writ petitioner in **W.P.A. 20738 of 2024** (for short, the second writ petition).

Since the parties are common in both these writ petitions and the nature of issue raised through both these writ petitions are identical as the impugned order is one and same, the parties agree for disposal of both these writ petitions with this common order.

Mr. Yudhisthir Maity, learned counsel files his client's exception in second writ petition today in Court, the same is taken on record. Copy has been served.

The petitioner in the first writ petition alleges unauthorized construction and encroachment at the behest of the private respondent No. 8 therein upon the National Highway land in connection with **L.R. Plot No. 395 and 395/1850** (subject plots in the first writ petition).

Similarly, the petitioner in the second writ petition alleges unauthorized construction and encroachment upon the National Highway land at the behest of the private respondent No. 8 therein in connection with **L.R. Plot Nos. 395/1850** (for short, subject plot in the second writ petition).

The issue in the first writ petition had already travelled this Court previously in the writ jurisdiction and a co-ordinate bench directed the competent authority to decide the issue by passing a reasoned order in the manner and mode recorded in its order dated **March 25, 2024**.

Pursuant to the direction of the co-ordinate bench the issue was considered, hearing took place before the competent authority on **March 26, 2024** and the impugned order was passed under **Section 26** of the **Control of National Highways (Land and Traffic) Act, 2002** (for short, the said 2002 Act) directing both the writ petitioners to remove the unauthorized occupation/encroachment and to hand over the vacant possession of the portion of the National Highway land, as would appear from **page 50** to the writ petition.

Both the writ petitioners have challenged the said impugned order through their respective writ petitions.

Learned counsel appearing for both the writ petitioners in support of their respective writ petitions made a common submission that before passing the said impugned order no inspection of the alleged encroachment had taken place to their knowledge and no inspection had taken place upon notice to them as a result they were not in a position to attend the

physical inspection of the alleged encroachment. No inspection report was also furnished to them prior to the hearing took place on **March 26, 2024**.

Mr. Sayan Dey, learned counsel appearing for the National Highway Authority submits that after serving due notice of hearing, the hearing took place when both the writ petitioners attended and/or were represented in the hearing. The impugned order, on the face of it shows it is well versed, reasoned and founded. After considering all the land records the order was passed in exercise of powers under **Section 26** of the said **2002 Act**. There is no infirmity in the said impugned order and as such the same shall not be interfered with as the portion of National Highway land has been found to be encroached upon by the petitioners..

He further submits that, **Section 14** to the said **2002 Act** provides for appellate provision. In view of the existence of the said appellate authority, the writ petitions should not be entertained by this Writ Court since an alternative remedy is available. Referring to **page 46** from the first writ petition learned counsel submits that the impugned order was passed on **April 25, 2024**. Referring from the report filed on behalf of the respondent Nos. 4 and 5 learned counsel submits that **annexure – C** at **page 10** thereto is the inspection report dated **April 3, 2024**.

On the basis of the said report the order was passed on **April 25, 2024**.

After considering the rival contentions of the parties and upon perusal of the materials on record, on the face of the record it appears to this Court that, admittedly the hearing took place on **March 26, 2024** and the submission of the respondent National Highway Authority shows that the order was passed on **April 25, 2024** on the basis of the said inspection report dated **April 3, 2024, annexure – C** at **page 10** to the report filed by NHAI.

This clearly shows that as on the date of hearing on **March 26, 2024** neither the report was prepared or submitted nor the order impugned was passed. Only after receiving the report dated **April 3, 2024** the impugned order was passed on **April 25, 2024**. This Court is of the firm view that, when a direction for demolition is made on the basis of field inspection report, the parties who are directed to demolish their structures should be granted an opportunity to be present at the time of field inspection and copy of the field inspection report should be provided to the affected parties prior to the hearing took place, so that they can get an opportunity to deal with the report, which is the integrated part of the elementary principle of natural justice. Having not called upon both the petitioners in

both the writ petitions during the field inspection and since the inspection was done without any notice to the writ petitioners in both these writ petitions and more so since no copy of the inspection report was furnished before the petitioners prior to hearing took place on **March 26, 2024**, the petitioners could not get opportunity to deal with the said inspection report in course of the hearing. This is a clear breach of the principle of natural justice.

It is true that **Section 14** provides for an appellate remedy under the **2002 Act**. It is equally settled that when there is a breach of the principle of natural justice glaring on the face of record, this Constitutional Court in exercise of its power under **Article 226 of the Constitution of India** may intervene. Alternative remedy is not an absolute bar then. It is the self-imposed restriction upon a Constitutional Court.

In the facts of this case, as the breach of natural justice is glaring on the face of record this Court is not hesitant to intervene.

Accordingly, the order impugned passed in course of the hearing held on **March 26, 2024** at **page 46** to the first writ petition and specifically at **page 47** to the first writ petition stands **set aside** and **quashed**. The inspection report dated **April 3, 2024**,

annexure – ‘C’ at **page 10** to report filed on behalf of NHAI also stands **set aside** and **quashed**.

However, the jurisdictional Project Director and/or any other appropriate authority of NHAI upon issuing a prior notice to the writ petitioners in both the writ petitions shall cause a physical inspection of the alleged encroachment/unauthorized structures being the subject matter mentioned in the impugned order passed in course of the hearing held on **March 26, 2024** (for short, the subject unauthorized construction) and then shall prepare a report and submit the report before the jurisdictional Project Director. Copies of the report shall also be furnished upon the petitioners in both the writ petitions.

This exercise shall be carried out by the appropriate authority of the NHAI positively within a period of **three weeks** from the date of communication of this order.

After receiving a copy of the report of physical inspection, the jurisdictional Project Director upon issuing a prior hearing notice of at least seven days to the petitioners in both these writ petitions and after granting them an opportunity of hearing shall decide the issue and pass a reasoned order afresh in accordance with law.

This exercise shall be carried out and completed by the jurisdictional Project Director

positively within a period of **four weeks** from the date of receiving the inspection report and the reasoned order shall be communicated to the petitioners in both these writ petitions positively within a further period of **one week** from the date of the said reasoned order to be passed.

It is made clear that, this Court has not gone into the merits of the claim of the petitioners in both these writ petitions. They shall be at liberty to urge their respective points on the basis of the existing records before the jurisdictional Project Director on which the impugned order was passed and additionally on the basis of the inspection report to be prepared and submitted before the jurisdictional Project Director as per the direction made in this order.

In the event, the reasoned order to be passed by the jurisdictional Project Director confirms the encroachment on National Highway land and the unauthorized construction at the behest of the petitioners in both these writ petitions, the Project Director and/or any other appropriate authority of NHAI shall take all necessary and consequential steps in accordance with law to remove such encroachment and unauthorized constructions from the land of the NHAI but positively within a period of **two weeks** from date of the said reasoned order to be passed. In such

event, the local police force shall render all necessary assistance, if such assistance sought for by the NHAI authority.

It is made clear that, this order shall not create any right or equity in favour of the petitioners in both these writ petitions, if they do not succeed to their respective claims before the jurisdictional Project Director strictly in accordance with law.

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, both these writ petitions being **W.P.A. 13064 of 2024 and W.P.A. 20738 of 2024** stand **disposed of**, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)