

Court No. 2
06.12.2024
(Item No. 7)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 21421 of 2024

Ansar Seikh & Ors.
VS
The State of West Bengal & Ors.

Mr. Debasish Banerjee
.... For the petitioners
Mr. Rajarshi Basu
Mr. S. T. Mina
.... For the State

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

On the prayer of Mr. Debasish Banerjee, learned counsel appears for the petitioners leave is granted to the petitioners to file a supplementary affidavit to disclose the order passed under **Sub-Section 1 to Section 10 of the West Bengal Highways Act, 1964**. Supplementary affidavit filed in Court today is taken on record. Copy has been served upon the learned State counsel.

On the prayer of learned counsel for the petitioners one Mr. Sushanta Kapat is impleaded as a party respondent in this writ petition, as it is submitted on behalf of the petitioners that such individual is a necessary party in this writ petition but mistakenly was not impleaded. The impleadment shall be carried out in the cause title of the original writ petition by putting the signature of the learned

advocate on record for the petitioners. The petitioners then shall serve a copy of the amended writ petition along with a copy of today's order upon the said added respondent within a week from date.

The learned counsel for the petitioners submits that, previously the said added respondent file a writ petition being **W.P.A. 24313 of 2022** which was disposed of by a co-ordinate bench by an order dated **January 13, 2023** at **page 28** to this writ petition. Under the said order a proceeding was directed to be initiated under **Section 10** of the said **1964 Act** and as a result thereof the order dated **December 3, 2024** has been passed by the respondent No. 4, **annexure P-5** at **page 4** to the supplementary affidavit. The order was passed by the previous Writ Court on the allegation of the said added respondent that the writ petitioners in the instant writ petition though were not impleaded in the previous writ petition, alleged to have encroached PWD land.

Referring to the said order dated **December 3, 2023** passed by the respondent No. 4, as referred to above, learned counsel for the petitioners submits that without granting any opportunity of hearing to these writ petitioners the same was passed.

In view of the above, taking into an overall consideration on the issue, the said order dated

December 3, 2024 is directed to be kept in abeyance until the time mentioned hereinafter.

Mr. Rajarshi Basu, learned State counsel submits that, the petitioner No. 4 and 5 have not been served with the said notice dated December 3, 2024 and more so the same is an appellable decision.

After considering the rival contentions of the parties and upon perusal of the materials on record, the jurisdictional Block Land & Land Reforms Officer after issuing a prior notice to these petitioners and the added respondent shall cause a physical inspection of the alleged encroachment on the P.W.D. land on the basis whereof the said notice dated **December 3, 2024** was issued. The jurisdictional B.L. & L.R.O. then shall submit the copy of the inspection report to the petitioners and added respondent and shall submit a report before the respondent No. 4.

This exercise shall be carried out and completed by the jurisdictional B.L. & L.R.O. positively within a period of **three weeks** from the date of communication of this order.

Upon receiving the said report from the jurisdictional B.L. & L.R.O. the respondent No. 4 shall issue a prior hearing notice of at least seven days to the petitioners and the added respondent herein and after granting them an opportunity of hearing shall

decide the issue by passing a reasoned order in accordance with law.

The entire exercise shall be carried out and completed by the respondent No. 4 positively within a period of **six weeks** from the date of receiving the report from the jurisdictional B.L. & L.R.O. The reasoned order shall be communicated to the petitioners and the added respondent herein positively within a period of **one week** from the date of the said reasoned order to be passed.

In the event the reasoned order confirms the alleged encroachment on P.W.D. land, then the respondent No. 4 and/or the appropriate State authority shall take all necessary and consequential steps to give an immediate effect to the said reasoned order in accordance with law but positively within a further period of **six weeks** from the date of the said reasoned order to be passed.

It is made clear that, if the reasoned order confirms the encroachment then the said notice/order dated **December 3, 2024** shall merge with the reasoned order to be passed and in effect steps shall be taken for removal of encroachment in accordance with law.

In the event the reasoned order to be passed as directed herein by the respondent No. 4 is with the finding that no encroachment has happened on the

P.W.D. land, then automatically the said notice/order dated **December 3, 2024** shall lose its force and shall stand set aside.

It is made clear that, this Court has not gone into the merits of the claim of the contentions of the petitioners and the added private respondent herein and they 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 respondent No. 4.

It is further made clear that, this order shall not create any right or equity in favour of the petitioners or in favour of the added private respondent herein, if they do not succeed to their respective contentions before the respondent No. 4 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, this writ petition, **WPA 21421 of 2024** stands **disposed of**, without any order as to costs.

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

(Aniruddha Roy, J.)