

Court No. 2
08.10.2024
(Item No. 4)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 23904 of 2024

Sri Sukumar Pramanik & Ors.
VS
The Union of India & Ors.

Mr. Avijit Roy
Mr. Rajkumar Sain
.... For the petitioners
Mr. Pinaki Ranjan Chakraborty
Mr. Ganga Prasad Mukherjee
.... For respondent Nos. 1 to 4
Ms. Manika Roy
Ms. Shinjita Ray
.... For NHAI

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

Mr. Avijit Roy, learned advocate appears for the petitioners.

Mr. Pinaki Ranjan Chakraborty, learned advocate appears for respondent Nos. 1 to 4.

Ms. Manika Roy, learned advocate appears for respondent No. 10.

The State respondents are not represented, despite notice.

The writ petitioners have challenged the impugned order dated **September 8, 2024, annexure P-5 at page 51** to the writ petition by which the petitioners are declared to be encroachers on **National Highway, N.H. 41**.

This is the second round of writ litigation. In the first writ petition **W.P.A. 1904 of 2023** an order was passed by a co-ordinate bench dated **February 8, 2024** when the issue of alleged encroachment of the

petitioners was directed to be considered by the National Highways Authority of India after granting them an opportunity of hearing and then by passing a reasoned order.

Pursuant to the said direction the said impugned reasoned order was passed on **September 8, 2024** declaring the writ petitioners to be encroachers on the National Highway and consequential order for removal has been made under **Section 26 of the Control of National Highways (Land and Traffic) Act, 2002.**

Learned counsel for the petitioners submits that, prior to passing of the impugned order no notice was served upon the petitioners for demarcation of the alleged encroachment and therefore the impugned order stands vitiated since the procedure of law has not been followed.

Ms. Manika Roy, learned counsel for the National Highways Authority of India referring to the impugned order submits that, this point was never taken by the petitioners in course of the hearing where the petitioners had participated and the impugned order was passed.

Per contra, learned counsel for the petitioners have denied and disputed the submissions made on behalf of the National Highways Authority of India and submits that, in the hearing the petitioners have filed their written statement in which the point was

specifically taken but not dealt with in the impugned order.

Mr. Pinaki Ranjan Chakraborty, learned counsel for the Union of India has also adopted the submissions made on behalf of the National Highways Authority of India.

After considering the rival contentions of the parties and upon perusal of the materials on record it appears to this Court that, **Section 14 of the said Act of 2002** provides for statutory appeal which is efficacious, alternative statutory remedy available to the petitioners. The petitioners have right to prefer such appeal. The points raised by the petitioners may require little fact finding enquiry on the basis of the existing record which can effectively be done by the statutory appellate authority and not by the writ Court. Writ Court shall not go into such fact finding enquiry.

In view of the above, this Court is of the firm view that, this writ petition is not maintainable.

Accordingly, the petitioners shall be at liberty to prefer the statutory appeal within a period of **four weeks** from date under **Section 14 of the said Act of 2002**.

In the event, such statutory appeal is preferred, the jurisdictional appellate authority shall register the same and deal with and dispose of the same after granting an opportunity of hearing to the

parties to the appeal by passing a reasoned order in accordance with law as expeditiously as possible.

It is made clear that, this Court has not gone into the merits of the writ petition and all points are kept open for the petitioners to urge in the appeal.

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 this writ petition **W.P.A. 23904 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.)