

Court No. 2
08.10.2024
(Item No. 5)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 23922 of 2024

Hiren Dhara
VS

The State of West Bengal & Ors.

Mr. Rajkumar Sain

.... For the petitioner

Mr. Soumitra Bandyopadhyay

Mr. Priyabrata Batabal

.... For respondent Nos. 1 to 6

Ms. Rama Haldar

Mr. S. K. Santra

Ms. Diya Dutta

.... For respondent Nos. 7, 8, 11, 12 16 and 17

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

Mr. Rajkumar Sain, learned advocate appears
for the petitioner.

Mr. Priyabrata Batabal, learned advocate led
by Mr. Soumitra Bndyopadhyay, learned State
advocate appears for respondent Nos. 1 to 6.

Ms. Rama Haldar, learned advocate appears
for respondent Nos. 7, 8, 11, 12 16 and 17.

Despite notice the non-appearing respondents
are not represented.

The petitioner complains of alleged illegal
construction on the P.W.D. land and encroachment
thereupon at the behest of the private respondents.
The petitioner submitted representation dated **August**
20, 2024, annexure P-2 at **page 30** to the writ
petition but the same has not been disposed of.

Ms. Rama Haldar, learned counsel appearing
for the private respondents submits that, whatever

construction has happened on the land of the private respondents the land is owned by the private respondents. Private respondents have purchased the land through their several registered deed of conveyance. She further submits that, the construction has been made after obtaining permission from the Panchayat authority and also by conversion of user of land. She submits that, egress and ingress of the petitioner has not been disturbed at all.

After considering the rival contentions of the parties and upon perusal of the materials on record, the respondent No. 5 is directed upon issuing prior notice to the petitioner and the private respondents to cause a physical inspection of the alleged structure and the encroachment and prepare a report. The copies of the report shall be submitted to the petitioners and the private respondents, and the **jurisdictional Assistant Engineer, Tamluk Highway Sub-Division, P.W.D.**

This exercise shall be carried out and completed by the respondent No. 5 positively within a period of **six weeks** from the date of communication of this order.

After receiving the inspection report from the respondent No. 5, the jurisdictional Assistant Engineer, P.W.D. after issuing a prior hearing notice of at least seven days to the petitioner and the private

respondents and after granting them an opportunity of hearing shall decide the representation dated **August 20, 2024** at **page 30** to the writ petition as referred to above, by passing a reasoned order in accordance with law.

This exercise shall be carried out and completed by the jurisdictional Assistant Engineer, P.W.D. positively within a period of **six weeks** from the date of receiving the report from the respondent No. 5 and the reasoned order shall be communicated to the petitioner and the private respondents 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 rival contentions of the parties and the petitioner and the private respondents 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 Assistant Engineer, P.W.D.

In the event the reasoned order confirms encroachment, then the Assistant Engineer, P.W.D. shall communicate the same to the respondent No. 3 positively within a period of **three weeks** from the date of the said reasoned order who shall take all necessary and consequential steps to give immediate effect to the reasoned order in accordance with law but positively within a period of **four weeks** from the

date of receiving the said reasoned order from the Jurisdictional Assistant Engineer, P.W.D.

It is made clear that, this order shall not create any right or equity in favour of the petitioner or in favour of the private respondents, if they do not succeed to their respective contentions before the jurisdictional Assistant Engineer, P.W.D. 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 **W.P.A. 23922 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.)