

**06**  
**08.10.2024**  
**Ct. No. 11**  
**Jayanta**

**MAT 1876 of 2024**  
**with**  
**IA No. CAN 1 of 2024**

**Achintya Samanta**  
**vs.**  
**Rajib Samanta & Ors**

Mr. S. Ghosh  
Ms. Moumita Ghosh  
....For the Appellant.

Mr. Dyotiman Banerjee  
Mr. Sourat Nandy  
....For the Respondent.

Ms. Manika Roy  
Ms. Shinjita Ray  
Ms. A. Chowdhury  
....For the NHAI.  
Mr. Chandi Charan De, Ld. AGP  
....For the State/Respondent.

1. The present appeal has been preferred to assail an order dated 4<sup>th</sup> September, 2024, passed in WPA 22165 of 2024.
2. Before delving into the controversy that led to the institution of this appeal, necessary facts need to be addressed.
3. The appellant herein made a complaint before the competent authority, inter alia, alleging that the private respondent has encroached upon the land of the PWD and set up a hotel, which has resulted in the obstruction of his peaceful possession of his residential house and access to and from this house. However, despite receiving such a complaint, it was

not attended to, prompting the appellant to file a writ petition, WP No. 25547 of 2023, which was disposed of by an order dated 15th May 2023, with the following directions:

*“6. Accordingly, WPA 25547 of 2023 is disposed of by directing the respondent nos. 1 to 2 to ensure that the representations given by the petitioner and annexed to the writ petition with regard to alleged encroachment of Highway property by respondent no. 7 are dealt with and, upon proper enquiry being conducted through appropriate authorities, to come to a prima facie conclusion as to whether such encroachment might have taken place.*

*7. It is expected that such exercise shall be concluded within four weeks from date.*

*8. Upon such enquiry, if it found that prima facie there is unauthorized encroachment by respondent no. 7 on Highway Authority property, the said authorities shall initiate appropriate steps in accordance with law for removal of such encroachment.”*

4. Pursuant thereto, the Project Director, Respondent No. 3, passed an order dated 21st August 2024, based on a report that had not been served to any of the parties. However, the private respondent challenged the order dated 21st August, 2024 by filing a writ petition, WPA 22165 of 2024. The writ petition was entertained despite the availability of a statutory appeal for the petitioner against the order on the ground of violation of the principle of natural justice, as the report had not been provided to any of the parties, including the petitioner in WPA 22165 of 2024. Accordingly, the order dated 21st August, 2024

was set aside, and the concerned respondents were directed to initiate fresh proceedings under Section 26 of the National Highway (Land and Traffic Act, 2002) in accordance with the law.

5. The said order has been placed under scrutiny in this appeal on the ground that the writ petition was disposed of despite the service upon the private respondent, who is the appellant herein, not being complete, which prevented the appellant from ventilating his grievances.
6. Mr. Ghosh submits that this infirmity warrants interference with the order impugned in the appeal.
7. Heard the learned advocates appearing for the respective parties and considered the materials on record.
8. In our opinion, even if the appellant had been granted an opportunity for a hearing before the learned Single Judge, the outcome would not have been different, as the entire dispute was decided based on a report that was admittedly not served to the parties before the Project Director made the final decision. However, we cannot express our agreement to the observation made by the learned Trial Court that *‘This order does not preclude the authorities from initiating a fresh proceeding against the petitioner under Section 26 of the National Highways (Land and Traffic) Act, 2002, in accordance with the law’*. Given this context, we are of the view that there is no requirement to initiate any fresh proceeding.

Therefore, this portion of the order challenged in this appeal is set aside.

9. The appeal and the connected application are disposed of with a direction to Respondent No. 3 to provide a copy of the report to both parties the appellant and the private respondent. The Project Director shall afford both parties the opportunity to make their submissions on the report and pass a reasoned order. The entire exercise shall be carried out within eight weeks from date.
10. There shall, however, be no order as to costs.
11. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

**(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty,J.)**