

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

54 07.11.2024
Sc Ct. no.2

WPA 26130 OF 2024

Dhruba chand Halder

Vs.

The State of West Bengal & Ors.

Mr. Sk. Rejaul Alam

.... For the Petitioner

Mr. Pankaj Halder

Mr. Tapas Manna.

.... For the Respondent
No.6

Mr. Lakshminath Bhattacharya

.... For the Private
Respondent no.7

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

Sk. Rejaul Alam, learned advocate appears for the petitioner.

Mr. Pankaj Halder, learned advocate appears for the respondent no.6.

Mr. Lakshminath Bhattacharya, learned advocate appears for the private respondent no.7.

The petitioner complains of an alleged encroachment and unauthorized construction on the PWD land at the behest of the private respondent. The petitioner submitted a representation dated **September 20, 2024, Annexure P-2 at page-11** to the writ petition, but the same has not yet been dealt with.

Learned advocate appearing for the private respondent has denied and disputed the contention of the petitioner. He has denied that there is any encroachment. He submits that, the private respondent has built up this construction on his own land of which he is the owner. Learned advocate for the private respondent further submits that it is not the land of PWD.

Mr. Lakshminath Bhattacharya, learned advocate for the private respondent prays for time to file affidavit-in-opposition.

The private respondent has raised the ***point of maintainability*** of this writ petition on the ground that, the petitioner does not have *locus standi*. He submits that, the petitioner is neither the owner nor the occupier of the concerned land. He further submits that, it is a counter-blast of a complaint lodged by the private respondent against the concerned gram Panchayat.

After considering the rival contentions of the parties and upon perusal of the materials on record it appears to this Court that, whenever an encroachment has been alleged on a public land before a Writ Court, the Writ Court in exercise of its discretion, if it thinks fit can also direct the appropriate authority to cause the necessary inquiry into it. If the enquiry result shows no encroachment the person concerned against whom the allegation of encroachment is there shall be free and

shall enjoy his own property without interference by the appropriate authority. In the event the encroachment is found it is inevitable that, such encroachment has to be removed forthwith in accordance with law. Accordingly, the contentions raised before this Court on behalf of the private respondent stands rejected and overruled.

In view of the above, the jurisdictional Block Land and Land Reforms Officer (B.L. & L.R.O) upon prior notice to the petitioner and the private respondent shall cause a physical inspection of the alleged encroachment and construction and shall submit his report before the petitioner, private respondents and the jurisdictional Assistant Engineer, PWD.

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

In the event such report confirms the alleged encroachment and construction on the PWD land then the jurisdictional Assistant Engineer, PWD after issuing a prior hearing notice of at least **seven days** to the petitioner and the private respondent and after giving them an opportunity of hearing shall decide the said representation dated **September 20, 2024** as referred to above by passing a reasoned order in accordance with law.

The entire exercise shall be carried out and completed by the jurisdictional Assistant Engineer, PWD positively within a period of **six weeks** from the date of receiving report from the jurisdictional B.L. & L.R.O. The reasoned order shall be communicated to the petitioner and the private respondent positively within a period of **two weeks** 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 case of the petitioner or the private respondent 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 jurisdictional Assistant Engineer, PWD.

In the event, the reasoned order confirms the alleged unauthorized construction and encroachment, the jurisdictional Assistant Engineer, PWD shall communicate the order to the jurisdictional Sub-Divisional Officer positively within a period of **three weeks** from the date of the said reasoned order to be passed, who shall take all necessary and consequential steps to give an immediate effect to the said reasoned order in accordance with law positively within **four weeks** from the date of receiving the reasoned order from the Assistant Engineer, PWD.

This order shall not create any right or equity in favour of the petitioner and in favour of the private

respondent, if they do not succeed to their respective claim before the jurisdictional Assistant Engineer, PWD 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 26130 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.)