

Court No. 2
18.11.2024
(Item No. 7)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 26409 of 2024

Gour Chandra Ghosh & Ors.
VS
Union of India & Ors.

Mr. Mahammad Mahmud
.... For the petitioners
Mr. Sudipto Panda
Ms. Ananya Neogi
.... For the State
Mr. Sounak Mukhopadhyay
Mr. Amit Meharia
Ms. Paramita Banerjee
Mr. Sayan Dey
.... For respondent No. 2

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

This is a second round of writ litigation filed by the petitioners. The petitioners contend that, they run a hotel from their own plot of land. The Highway authority contends this is an encroachment of Highway land. Previously steps were taken under **Section 26(2) of the Control of National Highways (Land and Traffic) Act, 2002 (for short, the said 2002 Act)**. Opposing the said stand of the National Highway Authority the petitioners submitted a representation dated **March 22, 2024, annexure P-8** at **page 71** to the writ petition. In the previous writ petition **W.P.A. 10577 of 2024**, a co-ordinate Bench passed its order dated **June 20, 2024** directing the

respondent No. 2 herein in the manner and mode as directed therein.

An order was passed by the respondent No. 2 herein on **October 3, 2024, annexure P-11** at **page 94** to the writ petition, the same is impugned in this writ petition.

Mahammad Mahmud, learned advocate appearing for the petitioners submits that, in course of the hearing all the title deeds produced by the petitioners were not considered by the respondent No. 2 while passing the impugned order. Referring to the relevant record of right the petitioners contend their names are featuring and the relevant title deed shows they are the owner of the subject piece of land wherefrom they are running their hotel.

Mr. Sounak Mukhopadhyay, learned advocate appearing for respondent No. 2, the National Highway Authority denies and disputes the contentions of the writ petitioners and referring to the impugned order he submits it is a detailed, well versed and reasoned order which was passed upon considering all the documents and records produced by the parties and the relevant land records in existence.

Be that as it may, any order passed under **Section 26** of the said **2002 Act** is appealable under **Section 14** of the said **2002 Act** before the jurisdictional Court as defined in the Act. The rival

contentions of the parties show there may be disputed questions of facts for which a detailed fact finding enquiry may have to be gone into. Further, this Court is of the view that, this is not the job of the writ Court when there is an existence of a statutory appeal.

In view of the above, writ petitioners shall be at liberty to prefer the necessary appeal under **Section 14 of the said 2002 Act** positively within a period of **two weeks** from date. In the event, such an appeal is preferred within such time the appeal shall have to be registered on the same day and the petitioners shall be at liberty to apply for an interim order in the appeal and such application for interim order shall also have to be filed along with the appeal.

In the event, such an interim application is filed simultaneously and along with the appeal, the said interim application shall be taken up for consideration and shall be considered and disposed of by the jurisdictional appellate authority positively within a period of further **two weeks** from the date of filing of the appeal after granting an opportunity of hearing to the parties to the said interim application and by passing a reasoned order to be passed by the appellate authority.

Till one week after the order is passed in the interim application there shall be an order of status

quo with regard to nature, character and possession of the said land.

The appeal shall have to be disposed of by the jurisdictional appellate Court positively within a period of **four months** from the date of filing of the appeal in accordance with law after granting an opportunity of hearing to the parties to the appeal and by passing a reasoned order.

It is made clear that, the jurisdictional appellate Court as defined under the said **2002 Act** shall not be influenced by observation of this Court, if any, at the time of deciding both the interlocutory and main appeal. The jurisdictional appellate Court shall dispose of both the interlocutory application and the main appeal on their respective merits and in accordance with law.

It is also made clear that, this order shall not create any right or equity in favour of the petitioners if they do not succeed to their contentions both at the interlocutory and at the final stage of the appeal.

It is made clear that this Court has not gone into the merits of the rival contentions of the parties and the parties shall be at liberty to urge whatever points they wish to urge in the appeal both at the interlocutory and the final stage.

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. 26409 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.)