

06.11.2024
Ct. No. 2
Sl. No. 3
Moumita/SM

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

WPA 26640 of 2024

**Manas Adhikary And Ors.
Vs.
The State of West Bengal & Ors.**

**Mr. Dhiraj Kr. Trivedi
Mr. Bankim Pal
Ms. Katha Sarkar
..... for the petitioners**

**Mr. Chandi Charan De, Ld. A.G.P.
Mr. Lalit Mohan Mahata
Mr. Prasanta Behari Mahata
.....for the State/Respondent
Nos. 1 to 8
Mr. Kamalesh Bhattacharya
Mr. Robiul Islam
Mr. Masooq Rahaman
Mr. Raju Mondal
.....for the Respondent no. 9**

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

Mr. Dhiraj Kr. Trivedi, learned Counsel for the petitioner.

Mr. Chandi Charan De and Mr. Lalit Mohan Mahata both the learned Additional Government Pleaders appear for the respondent nos. 1 to 8.

Mr. Kamalesh Bhattacharya along with Mr. Robiul Islam, learned Counsel appears for the respondent no. 9.

Through this writ petition the petitioners have challenged the impugned order dated **September 12, 2024** passed by the respondent no. 5 **Annexure P12 at**

page 179 to the writ petition. The State authorities on the plea of encroachment on State Highway Land proceeded for eviction of the petitioners by removing the encroachment.

The issue has been travelling to this Court on several occasions, at least three writ petitions have been filed from time to time by the petitioners. The checkered history of litigation shows that the step for eviction, for the first time, was taken way back on November 10, 2022 when the jurisdictional Assistant Engineer PWD issued notice under **sub-section (1) to Section 10** of the West **Bengal Highways Act, 1964** (for short the **Highways Act**). Due to procedural infirmities from time to time the issue was remitted back for a decision by the appropriate authority. The impugned order was passed in an appeal under **sub-section (4) to Section 10** of the **Highways Act** passed by the respondent no. 5, the statutory appellate authority.

The appeal paper is available **annexure P7 at page 134** to the writ petition. The order which was impugned in the appeal was **December 20, 2023** passed by the jurisdictional **Sub-Divisional Magistrate at page 151** to the writ petition.

When the appeal was considered for the first time and the order was passed on June 26, 2024 **at page 166** to the writ petition, the appeal was dismissed and the

order of the **Sub-Divisional Magistrate** dated December 20, 2023 was upheld directing removal of encroachment.

The said order dated June 26, 2024 passed in appeal was challenged before this Court in the previous writ petition being **WPA 18356/2024**. The said writ petition was allowed by this Court on **July 26, 2024 Annexure P11 at page 168** to the writ petition whereunder the said order passed in appeal dated June 26, 2024 was set aside and the appeal was directed to be heard afresh with certain directions as mentioned therein. One of the directions was that the report submitted by the jurisdictional **B.L. & L.R.O.** was directed to be furnished to the writ petitioners herein being the appellants therein and then the appellate authority was directed to revisit the issue.

The petitioners have not preferred any appeal from the said order dated July 26, 2024 and have accepted the same by participating in the hearing of the appeal before the respondent no. 5 when the order was passed on September 12, 2024, impugned in this writ petition.

Referring to the said impugned order dated September 12, 2024 Mr. Dhiraj Kr. Trivedi, learned Counsel appearing for the petitioner submits that on a scrutiny of the records and the impugned order itself it would be evident that the procedures laid down under Section 10 of the **Highways Act** was not followed. The

order was passed on December 20, 2023 by the **Sub-Divisional Magistrate** for removal of encroachment on the basis of the report of the **B.L. & L.R.O.** The report was not furnished to petitioners as a result the petitioners could not get an opportunity to deal with the report at the stage under **sub-section (3) to Section 10** of the **Highways Act**. A gross miscarriage of justice took place at that juncture. Learned counsel then submits that after a copy of the **B.L. & L.R.O.** report being provided to the petitioners, the appeal was heard under **sub-section 4 to Section 10** of the **Highways Act** by the respondent no. 5 and the order of removal of encroachment was upheld and was confirmed. The petitioner did not get an opportunity to contest the report of the **B.L. & L.R.O.** at the **Section 10 (3)** of the **Highways Act** stage.

Mr. Trivedi then relies upon a series of documents from page 35 to 105 to the writ petition in support of his contention that the petitioners are in valid and lawful possession of the subject land and there is no encroachment at all at the instance of the petitioners. He submits that none of those documents were considered by the appellate authority while passing the impugned order and no finding was arrived at thereupon referring to the order passed by this Court dated July 26, 2024. Learned Counsel submits that the parameter fixed by

this Court for hearing the appeal by the respondent no. 5 was not at all followed and there has been no independent finding of the respondent no. 5 while passing the said impugned order. In the light of the above submissions learned counsel for the petitioners submit that the said impugned order dated September 12, 2024 passed by the appellate authority cannot sustain in law and should be set aside.

Mr. Chandi Charan De, learned counsel appearing for the State/respondents submits that the basis of the finding of the appellate authority that the petitioners are encroachers on highway land is principally on the fact finding report submitted by the jurisdictional **B.L. & L.R.O.** While passing the impugned order the appellate authority has duly dealt with it. Copy of the report was submitted to the petitioners. Opportunity was granted to the petitioners to submit their documents and records to show their right to be in possession on the encroached land but the petitioner miserably failed to produce any document or evidence, in support of their lawful possession on the highway land. Referring to the provisions laid down under **Section 8** of the **Highways Act**. Learned Additional Government Pleader submits that no valid document whatsoever have been produced by the petitioners to show that they obtained any previous permission in writing from the highway

authority or any officer not below the rank of Assistant Engineer authorized by him to be in possession of the highway land. Referring to the appeal paper from the writ petition **at page 134** to the writ petition, learned Additional Government Pleader submits that not an iota of document showing permission of the highway authority granted in favour of the petitioner to occupy highway land was produced.

Mr. Kamallesh Bhattacharya, appearing for the respondent no. 9 at the outset adopts the submissions made by the Additional Government Pleader. He further adds that even in the writ petition not a single document or evidence has been placed before this Court that any previous permission in writing was received by the petitioner from the highway authority to remain in possession of the highway land. The finding of the appellate authority in the impugned order has been arrived after opportunity being granted to the petitioners. The petitioner could not produce any valid document has not been controverted in the writ petition. The petitioners are unauthorized occupiers and encroachers on the highway land.

After considering the rival contentions of the parties and upon perusal of the materials on record at the outset this Court reiterates that while exercising its jurisdiction under judicial Review in exercise of power

under Article 226 of the Constitution of India, this constitutional Court has a limited authority to scrutinize the impugned order. Unless a perversity is so glaring on the face of the impugned order or that there is an ex facie infirmity in the decision making process, the constitutional Court shall seldom interfere with the impugned order.

In the light of the above settled principles of law the Court now proceeds to scrutinize the impugned order dated September 12, 2024.

To come to a finding whether a portion of highway land has been encroached or not principally is a matter of fact finding enquiry. In the light of the existing land records, the jurisdictional **B.L. & L.R.O.** is the appropriate authority of the State who is authorized to this job under the law. The admitted fact is that the report prepared by the **B.L. & L.R.O.** has been furnished to the petitioners pursuant to the direction of this Court. Upon perusal of the said report the petitioners participated in the hearing of the appeal. There is no scope or reason to interfere with the fact finding report prepared by the **B.L. & L.R.O** unless an unimpeachable evidence is produced by the petitioners contrary to the said fact finding report. The admitted position is that the petitioner have not produced an iota of evidence to show that a previous permission in writing of the highway

authority as contemplated and provided under **sub-section (1) to Section 8** of the **Highways Act** was issued in favour of the petitioners to be in possession of the highway land. The documents **at pages 35 to 105** annexed to the writ petition are not the documents which would permit the petitioners to be in possession of a highway land within the meaning of **sub-section (1) to Section 8** of the **Highways Act**. In any event, a document showing payment of tax for occupation of a land or a trade licence or an electricity bill or any other statutory licence to carry out business from a particular land, do not and cannot confer any title or right in favour of the parties over and above a particular land on which the party is in occupation and possession. Moreover, the permissive occupation or possession on a highway land is governed under the provisions of the **Highways Act, 1964** and in absence of any previous written permission from the highway authority as provided under **sub-section (1) to Section 8** of the **Highways Act** in somebody's favour, such a person cannot occupy or possess any portion of the highway land and any such possession or occupation is unlawful and a clear encroachment on the highway land. Neither in the appeal nor in this writ petition the petitioners have produced an iota of document which can controvert the fact finding enquiry report of the **B.L. & L.R.O.**

Since the petitioners have accepted the previous order of this Court dated July 26, 2024 and participated in the hearing before the appellate authority, the issue raised by the petitioners that the petitioners have lost an opportunity at the **Section 10 (3)** stage is not tenable in law.

In view of the foregoing reasons and discussions, this Court is of the firm view that the impugned order dated **September 12, 2024** does not suffer from any **infirmary** and stands **affirmed**.

The State authority shall be free to take steps in accordance with law without any impediment.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

Accordingly, this writ petition **WPA/26640/2024** being devoid of any merit **stand dismissed**, without any order as to costs.

(Aniruddha Roy, J.)