

Court No. 2
06.12.2024
(Item No. 28)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side
W.P.A. 28869 of 2024

Ashis Sil & Ors.
VS
The State of West Bengal & Ors.
Mr. Mahim Sasmal
.... For the petitioners
Mr. Chandi Charan De, Id. Addl. Govt. Pleader
Ms. Reshma Chatterjee
.... For the State

On the undertaking of Mr. Mahim Sasmal, learned counsel appearing for the petitioners that in course of the day affidavit-of-service shall be filed, this order is being passed.

The petitioners are aggrieved with the impugned notice dated **November 27, 2024** issued by the jurisdictional Assistant Engineer, P.W.D. in exercise of its power under **Sub-Section 1 to Section 10** of the **West Bengal Highways Act, 1964** asking the petitioners to remove the alleged encroachment failing which the consequences will follow in accordance with law.

A previous writ petition **W.P.A. 22346 of 2024** was filed by private respondent Nos. 9 and 10 herein in which the petitioners were the private respondent Nos. 7 to 9 therein.

The co-ordinate bench by its order dated **September 19, 2024** disposed of the said previous

writ petition by directing the jurisdictional Executive Engineer, P.W.D. after granting the petitioners herein an opportunity of hearing to take steps in accordance with law.

Mr. Mahim Sasmal, learned counsel appearing for the petitioners submits that, no such opportunity of hearing was granted and the impugned notice dated **November 27, 2024** was issued.

None appears for the private respondents.

Mr. Chandi Charan De, learned Additional Government Pleader appears for respondent Nos. 1 to 7 submits that, there is not infirmity in the said notice dated **November 17, 2024, annexure P-3** at **page 93** to the writ petition. It is the statutory obligation on the part of the P.W.D. authority to issue the said notice in exercise of its power under **sub-Section 1 to Section 10** of the **1964 Act** and then the question of granting of opportunity of hearing will arise. Since the notice has already been issued, the next step shall be for granting an opportunity of hearing in terms of the order passed in the previous writ petition.

After hearing the submissions made on behalf of the parties and upon perusing the provisions of the relevant law, this Court is also of the view that the said notice since has already been issued now the stage has come for granting an opportunity of hearing.

Accordingly, the respondent No. 4 in terms of the order of the co-ordinate bench as referred to above, upon issuing a prior hearing notice of at least seven days to the petitioners and the private respondent Nos. 9 and 10 and after granting them an opportunity of hearing shall decide the issue by passing a reasoned order in accordance with law.

The entire exercise shall be carried out by the respondent No. 4 positively within a period of **six weeks** from the date of communication of this order and the reasoned order shall be communicated to the petitioners and the private respondents positively within a further period of **two weeks** from the date of the said reasoned order to be passed.

It is needless to mention that, the respondent No. 4 if thinks fit shall direct the appropriate authority to cause necessary physical inspection of the alleged encroachment upon previous notice to the petitioners and the private respondent Nos. 9 and 10 and shall obtain a report from such authority. Copies of the report shall also be submitted to the petitioners and the private respondents before they attend the hearing to be fixed by the respondent No. 4.

It is made clear that, this Court has not gone into the merits of the claim of the petitioners or the private respondents, 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 respondent No. 4.

In the event the reasoned order confirms encroachment on P.W.D. land the jurisdictional authority of the P.W.D. and/or other appropriate State authority shall take all necessary and consequential steps to give an immediate effect thereto in accordance with law but positively within a period of **six weeks** from the date of the said reasoned order to be passed.

It is made clear that, this order shall not create any right or equity in favour of the petitioners or the private respondents if they do not succeed to their respective claims before the respondent No. 4 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 28869 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.)