

10.12.2024
Ct. No. 2
Sl. No. 5
Moumita

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

WPA 29198 of 2024

**Biswajit Dutta @ Raju & Ors.
Vs
The State of West Bengal & Ors.**

**Md. Bani Israil
Mr. Syed Md. Sayed
....for the petitioners**

**Mr. Lalit Mohan Mahata
Mr. Ziaul Haque
.....for the state.**

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

Md. Bani Israil, learned Counsel
appears for the petitioners.

Mr. Lalit Mohan Mahata, learned state
Counsel appears for respondent nos. 1 to 11.

The private respondent no. 12 is not
represented.

Referring to a notice dated **November
27, 2024 annexure P-2 at page 72** to the writ
petition. The petitioners submit that the same
was issued under **Sub-Section 1 to Section
10** of the **West Bengal Highways Act 1964**.

Learned counsel for the petitioners then
refer to a communication dated **December 5,
2024 annexure P-5 at page 78** to the writ
petition seeking which is an application

seeking written permission from the PWD authority to occupy the PWD land which are already under occupation of the petitioners.

In view of the said application dated **December 5, 2024 at page 78** to the writ petition there is no requirement for further ascertaining whether there has been any encroachment on the PWD land or not at the behest of the petitioners.

In view of the above, the jurisdictional Assistant Engineer, PWD upon issuing a prior hearing notice of at least **seven days** to the petitioners and the private respondent no. 12 and after granting them an opportunity of hearing shall conclude the proceeding 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 communication of this order and the reasoned order shall be communicated to the petitioners and the private respondent positively within a period of **two weeks** from the date of the said reasoned order to be passed.

In the event the jurisdictional Assistant Engineer, PWD is of the opinion that a measurement of encroachment is required to be done physically, the same shall be done upon notice to the petitioners and the private respondents.

It is made clear, that in view of the said letter dated **December 5, 2024 at page 78** to the writ petition, since the encroachment is admitted by the petitioners, the jurisdictional Assistant Engineer, PWD and/or other appropriate state authority then shall give an immediate effect to the said reasoned order to be passed 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 the provisions under **Section 8** of the **1964 Act** applies before making any construction on the PWD road for seeking written permission from the PWD to cause construction. In the instant case, since the construction is already in existence, the adjudication of proceeding under **Section 10** shall not be affected by the pendency of the said application dated

December 5, 2024 submitted by the petitioners under **Section 8** of the said **1964 Act**.

However, the appropriate authority may also consider the application filed by the petitioners dated **December 5, 2024** which shall be an independent action under the provision of law and shall have no relation or nexus whatsoever with the said pending **Section 10** proceeding.

This order shall not create any right or equity in favour of the petitioners, if the petitioners do not succeed to their respective contentions before the jurisdictional Assistant Engineer, PWD who shall conclude the proceeding already initiated under **Section 10** of the **1964 Act**.

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 29198 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.)