

13.12.2024

Item No. 04

Crt.No.02

b.r.

WPA 29627 of 2024

Sujit Mandal & Anr.

-vs-

The State of West Bengal & Ors.

Mr. Atish Kumar Biswas

Mr. Suman Chakraborty

.... For the petitioners.

Mr. Supratim Dhar, Sr. Adv.

Ms. Dipa Bhattacharya

.... For the State.

Mr. Keshab Chandra Das

Mr. Biplab Adak

Ms. Aparajita Mandal

Mr. Tapan Dutta Gupta

... for the Private Resp. no.10.

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

Mr. Atish Kumar Biswas, learned counsel appears for the petitioners.

Mr. Supratim Dhar, learned Senior State advocate appears for the respondent nos. 1 to 9.

Mr. Keshab Chandra Das, Learned advocate appears for the private respondent no.10.

Through this instant writ petition, the petitioners has challenged the impugned order dated **November 13, 2024** passed under **Sub-Section (3) to Section 10 of the West Bengal Highways Act, 1964**. The said order is appealable

under **Sub-Section (4) to Section 10 of the 1964 Act**. Instead this writ petition has been filed.

Under the said impugned order, the petitioners were directed to remove the encroachment from Highway land within **five days**. The said time frame has already expired on **November 18, 2024**.

The petitioners have challenged the said impugned order on various counts. One such ground is that the demarcation directed by the State authority to be done in respect of a plot which according to the petitioners is not the plot in question. Therefore, there was no demarcation done. The copy of demarcation report has also not been supplied to the petitioners.

Be that as it may, these are all questions of facts required to be gone into and this writ Court shall not proceed for such fact finding enquiry.

Learned State counsel has also raised the point of maintainability of this writ petition since the statutory appellate remedy is available.

Learned advocate appearing for the private respondent no.10 submits that the subject plot is of which the private respondent is the owner and petitioners have no right, title or interest thereupon.

The private respondent no.10 submits that the petitioners upon encroachment of PWD land has obstructed the egress and ingress of the private respondent.

In view of the above, since the appellate remedy is available under the statute, the petitioners shall prefer the necessary appeal before the jurisdictional authority under **Sub-Section (4) to Section 10 of the 1964 Act** positively **within a week** from date.

The petitioners shall also file an interlocutory application seeking stay of operation of the impugned order dated **November 13, 2024** at the same time and the appeal and interlocutory application shall be registered on the same day by the appellate authority.

In the event, such an appeal along with the interlocutory application is filed, the jurisdictional appellate authority shall decide the interlocutory application positively within a period of **four days** from the date of filing and shall pass its reasoned order in accordance with law on the basis of the existing materials on which the impugned order was passed on **November 13, 2024**.

In the meantime, considering the threat of demolition, there shall an order of *status quo* with

regard to nature, character and possession of the property till **two weeks** from the date of the filing of the appeal and the interlocutory application.

It is made clear that observation, if any, made by this Court shall not be binding upon the jurisdictional appellate authority while deciding the interlocutory application and the appeal and such authority shall proceed independently in accordance with law.

It is made clear that this Court has not gone into the merits of the writ petition.

It is further made clear that this order shall not create any right or equity in favour of the petitioners, if they do not succeed to their respective contentions before the **jurisdictional Appellate Authority** in the interim application or in the appeal.

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 29627 of 2024** stands **disposed of**, without any order as to costs.

Since this order has been passed in presence of the learned Senior Counsel appearing for the State, the learned advocates shall be at liberty to

communicate gist of this order to their respective clients and to the parties to the proceeding.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)