

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

04 24.12.2024
Sc Ct. no.2

WPA 30524 OF 2024

Gour Mohan Pandit alias Gour Pandit

Vs.

The State of West Bengal & Ors.

Mr. Aritra Basu
Mr. Abhidipto Tarafdar
Mr. Md. Dilawar Khan
Mr. Arjun Bhajan
Mr. Soupayan S. Roy.

.... For the Petitioner

Mr. Chandi Charan De, AGP
Mr. Soumitra Bandyopadhyay
Ms. Suchana Banerjee.

.... For the Respondents
State

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

Mr. Aritra Basu, learned counsel appears for the
petitioner.

Mr. Soumitra Bandyopadhyay, learned senior State
counsel appears for the State respondents.

The ***prayer (A)*** to the writ petition runs as follows :

*“A Writ of and/or in the nature of
Mandamus do issue directing the
concerned respondents, their officer and
subordinates specially the respondent
nos. 5 to 8 to take the appropriate steps
to pay compensation as per laws to the
petitioner and not to acquire the land of
the petitioner unless legally acquired;”*

(Emphasis supplied)

The petitioner has challenged the impugned notice for removal of unauthorized encroachment dated **December 16, 2024, Annexure-P12 at page 77** to this writ petition.

Learned counsel for the petitioner submits that, the steps for removal of encroachment have not been taken following the due provisions laid down under **The West Bengal Highways Act, 1964** (for short the 1964 Act).

Learned State counsel submits that, the writ petition is not maintainable as there is a statutory appellate forum available to the petitioner under **sub-Section (4) to Section 10** of the 1964 Act.

Considering the rival contentions of the parties and upon perusal of the materials on record it appears to this Court that, in view of the **prayer (a)** to the writ petition and considering the submissions of the parties it appears that, a fact finding inquiry may be required to be conducted upon the rival contentions of the parties and since an alternative appellate remedy being there, this Writ Court refrains itself to proceed with such fact finding inquiry.

In view of the above, this writ petition **WPA 30524 of 2024** stands **dismissed**, without any order as to costs.

However, the petitioner shall be at liberty to prefer the statutory appeal forthwith.

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 by relying upon whatever records and documents they wish to reply upon before the appellate forum.

Considering the urgency in the matter if the petitioner files an appeal, the same have to be registered on the same day and the petitioner shall be at liberty to take out a necessary interlocutory application in the appeal which shall have to be registered on the same day and shall be heard first so that, the interim application of the petitioner, if it is filed before the appellate authority, is not rendered infructuous.

However, it is made clear that this order shall not create any right or equity in favour of the petitioner if the petitioner does not succeed to his contentions before the appellate authority both in the appeal and in the interlocutory application, if any.

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

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

(Aniruddha Roy, J.)