

**IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side**

WPA 936 of 2024

**Ajut Md. and Ors.
Versus
The State of West Bengal and Ors.**

Mr. Kunaljit Bhattacharjee, Adv.
Mr. Tapan Bhattacharjee, Adv.
Mr. Alok Sah, Adv.

... for the petitioners

Mr. Subir Kr. Saha, Adv.
Ms. Bedashruti Bose, Adv.

... for the State

Mr. Partha Sarathi Deb Barman, Sr. Adv.
Mr. Debasish Mukhopadhyay, Adv.
Mr. Soumyajit Dutta, Adv.
Ms. Madhushri Dutta, Adv.
Ms. Srishti Sarkar

... for the respondent no.6

Mr. Kunaljit Bhattacharjee, learned counsel, is
appearing for the petitioners.

Ms. Bedashruti Bose, learned counsel, is
appearing for the State.

Mr. Partha Sarathi Deb Barman, learned senior
counsel, is appearing for the respondent no.6.

The petitioner has filed the present application
praying for a direction upon the respondent no.5 to
consider the representation made by the petitioners
on 29.04.2024. In the previous litigation, the private

respondent had filed a writ petition being WPA No. 606 of 2024 and co-ordinate Bench of this Court by an order dated 09.04.2024 has disposed of the said writ application by passing the following order :-

“Today when the matter was taken up for consideration learned State counsel places a report dated **April 5, 2024** issued under the seal and signature of the respondent no. 5 which shows that, the encroachment has already been removed. The report is accompanied with a bunch of documents in support of such contention. The bunch of documents with the report is kept on record.

Learned State counsel shall make over a copy of the same bunch of documents along with the report to the learned counsel for the petitioner in course of the day.

However, to subserve justice, the respondent no. 5 shall consider the said representation dated **February 26, 2024, Annexure-P2 at page 19** to the writ petition in the light of the said report and the bunch of documents made over to this Court today and if the respondent no. 5 finds that the encroachment complained of has already been removed, he shall inform the same in writing to the petitioner positively within a period of **two weeks** from the date of communication of this order.

In the event the respondent no. 5 finds that, any further encroachment is there which is required to be removed, the respondent no. 5 shall take steps in accordance with law and inform the petitioner accordingly within the said period of two weeks, as directed above.

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

It is also made clear that, this order shall not create any right or equity in favour of the petitioner if the petitioner is not eligible to receive his claim in terms of his representation dated **February 26, 2024** strictly in accordance with law.

In the event the petitioner is compelled to initiate any further remedy available to him in law, this order shall not stand in the way and observation, if any, is made herein shall not be binding in adjudication of such proceeding.

On the above terms this writ petition, **WPA 606 of 2024** stands **disposed of**, without any order as to costs.

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

In compliance of the order dated 9th April, 2024, the respondent no.5 had issued a notice dated 24.04.2024 to the petitioners herein directing that the encroachment in front of the house of Ashim Paul (private respondent herein) may be removed within ten days from the date of receipt of the notice, failing which the department has no alternative other than to remove or dismantle the unauthorized construction with the help of the appropriate authority.

On receipt of the said notice, the petitioners have filed an application before the respondent no.5

on 29.04.2024 praying for grant of permit under Section 8(1) of the West Bengal Highways Act, 1964 to run their business as they are running their respective shops in the said premises for the last several years.

Learned counsel for the petitioners has drawn the attention of this Court to Section 8(1) of the West Bengal Highways Act, 1964 and submits that as per the provision, the respondent no.5 is the authority to grant permit to the petitioners to run their business on the land of the Highway Authority.

Learned counsel for the petitioners further submits that the respondent no.5 has passed the impugned order on 24.04.2024 in compliance of the order passed by the co-ordinate Bench of this Court dated 09.04.2024 but in the writ application, the private respondent has not made these petitioners as parties to the said writ petition and as such, the petitioners could not get an opportunity to place their case before this Court.

Learned counsel for the petitioners further submits that the respondent no.5 had issued the notice of removal dated 24.04.2024 directing the petitioners to remove the encroachment within ten days but the respondent no.5 has not provided any opportunity to the petitioners for hearing and as such, the petitioners have made an application for

grant of permit under Section 8(1) of the West Bengal Highways Act, 1964.

Learned counsel for the petitioner submits that as the petitioners have made representation before the authority for grant of temporary permit under Section 8(1) of the West Bengal Highways Act, 1964 and the same is pending for adjudication and as such, he prayed for direction upon the respondent no.5 not to take any action against the petitioners in terms of the impugned notice dated 24th April, 2024 till the disposal of their applications pending before the respondent no.5.

Learned counsel for the State submits that on previous occasion the private respondent had filed a writ application which was disposed of by this Court by an order dated 9th April, 2024 wherein this Court had directed the authorities that if any encroachment is found in front of the house of the private respondent, the respondent no.5 shall take steps in accordance with law and inform the petitioner within a period of two weeks and in compliance of the order dated 9th April, 2024. The respondent no.5 found that the petitioners have encroached the land of the Highway Authority in front of the house of the private respondent and accordingly, the respondent no.5 had issued the said notice dated 24.04.2024 for removal.

Counsel for the respondent no.6 submits that in terms of Section 10 of the West Bengal Highways Act, 1964, the Highway Authority or any officer authorized by him in this behalf shall serve a notice on him requiring him to remove the encroachment and restore the highway to its original condition within the period specified in the notice and in compliance of the said provision, the respondent no.5 had issued the notice to the petitioners for their removal within ten days from the date of receipt of the said notice and in the said notice it is clarified that if the petitioners will not remove the encroachment, the authority shall take steps for removal of the encroachment with the help of the appropriate authority.

Counsel for the private respondent submits that in terms of the said provision there is no necessity for issuance of the notice for giving the opportunity of hearing to the petitioners before their removal. The authorities have acted in compliance of the order passed by this Court dated 9th April, 2024 and the provision provided under the Act.

Counsel for the private respondent further submits that only to cause delay for removal of their encroachment from the highway, the petitioners have filed an application before the respondent no.5 for asking temporary permit. He submits that

representation filed by the private respondent is no way connected with the notice issued by the authority as the authority has issued the notice in compliance of the order passed by the co-ordinate Bench of this Court. He prays for dismissal of the writ application.

Heard the learned counsel for the respective parties. Perused the materials on record.

Admittedly, the private respondent has filed a writ petition on the previous occasion being WPA 606 of 2024 which was disposed of by an order dated 9th April, 2024. In the said writ petition, the petitioners herein, were not parties.

Counsel for the private respondent submitted that the private respondent was not aware of the persons who had encroached the land in front of the house of the private respondent and as such, he has not made any of them as party to the said writ petition.

During the hearing, learned counsel for the petitioners has handed over the proceeding initiated by the private respondent against the petitioners before the learned Executive Magistrate under Section 144 of the Code of Criminal Procedure wherein the details of the petitioners have been mentioned. He submits that the private respondent had the knowledge about the name and address of

the petitioners but intentionally he has not made them parties to the writ application.

Learned counsel for the private respondent disputed the submission made by the counsel for the petitioner and submitted that proceeding was initiated in the year 2022 and subsequently, they have been removed and subsequently only in the year 2023 some persons were trying to occupy the portion in front of the house of the private respondent and as such the private respondent was not aware of the details of the persons and thus he has not made them parties to the writ application.

The respondent no.5 by the impugned order dated 24.04.2024 has given the correct names and address of the petitioners. The name and address which the respondent no.5 has mentioned, the same name and address is mentioned in the application filed by the private respondent before the learned Magistrate under Section 144 of the Code of Criminal Procedure, thus the submissions made by the counsel for the private respondent is not justifiable.

In the impugned notice, the respondent no.5 has directed the petitioners to remove the encroachers within ten days, failing which the department will remove them with the help of the appropriate authority. In the meantime the petitioners have made

an application before the respondent no.5 for temporary permit.

Admittedly, in the writ petition, the petitioners were not the parties when the co-ordinate Bench of this Court has passed the order dated 9th April, 2024. In compliance of the order dated 9th April, 2024 passed by this Court, the respondent no.5 has issued the impugned notice directing the petitioner to remove the encroachment but the respondent no.5 has not issued any notice for giving any opportunity of hearing.

Section 10 of the West Bengal Highways Act, 1964, provided the Highway Authority or any officer authorized by him on his behalf shall serve a notice requiring him to remove the encroachment and restore the highway to its original condition within the period specified in the notice but only with regard to the provision that opportunity of hearing should not be curtailed and before directing the person for removal of the encroachment, an opportunity should be given. In the present case on receipt of the said notice, the petitioners have immediately filed an application asking for permission. It is the authority to decide whether the petitioners are entitled to get the permit. The respondent no.5 is empowered to take decision whether the petitioners are entitled to get permit or liable to be evicted.

In view of the above, this Court finds that the petitioners have already made an application for grant of temporary permit on 29.04.2024, the respondent no.5 is directed to consider the applications filed by the petitioners for grant of temporary permit within a period of four weeks from the date of receipt of this order. If the respondent no.5 finds that the petitioners are entitled to get the permit, the respondent no.5 can issue temporary permit as provided under law and if the respondent no.5 finds that the petitioners are not entitled to get temporary permit, the respondent no.5 shall be at liberty to take appropriate steps for removal of the petitioners from the encroachment over the State Highway properties. Till the decision is taken by the respondent no.5, no effect shall be given to the impugned order dated 24.04.2024.

In terms of the above, WPA No. 936 of 2024 is disposed of.

(Krishna Rao, J.)