

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side**

WPA 2414 OF 2024

JPD-1 19.11.2024
Sc Ct. no.2

Suresh Mandal

Vs.

State of West Bengal & Ors.

Mr. Sourav Sen
Mr. Muhammad Obaid
Ms. Adrisnata Chakraborty.
....For the Petitioner

Mr. Ashim Kumar Ganguly, AGP
Mr. Bellal Sheikh.
....For the Respondent
Nos. 1 to 4

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

Drawing attention to a notice dated **November 6, 2024, Annexure-P6 at page 116** to the writ petition Mr. Sourav Sen, learned counsel appearing for the petitioner submits that, there is a threat for removal of possession of the petitioner from the highway land as alleged by the Assistant Engineer (PWD). On the basis of the said urgency pleaded, this writ petition is being entertained by placing it in the daily cause list.

Mr. Ashim Kumar Ganguly, learned Additional Government Pleader appears for the respondent nos. 1 to 4.

None appears for the private respondent no.5, despite notice served through electronic mail.

Learned counsel for the petitioner submits that, a complaint was initially lodged by the private respondent no.5 alleging encroachment of highway land at the behest of the petitioner.

The private respondent no.5 moved a writ petition, **WPA 2052 of 2024**, when a coordinate Bench by its order dated **September 30, 2024** at **page 95** to the writ petition disposed of the writ petition directing the jurisdictional Executive Engineer (PWD), Construction Division to consider and dispose of the representation of the private respondent. Pursuant to such direction of the coordinate Bench, the impugned notice was issued on **November 6, 2024, Annexure-P6 at page 116** to the writ petition by the jurisdictional Assistant Engineer (PWD). The impugned notice shows that, there are ten individuals who alleged to have encroached the highway land. The petitioner is one of them.

Learned counsel for the petitioner submits that, the petitioner is occupying **R.S. Plot No.222** whereas the impugned notice dated **November 6, 2024, Annexure-P6 at page 116** has been issued in respect of **R.S. Plot No.215** even then the petitioner prays for identification of the plots whether the plot of the petitioner **R.S. Plot No.222** comes within the purview of the alleged encroachment of highway land.

Mr. Ashim Kumar Ganguly, learned Additional Government Pleader submits that, a civil suit is pending between the private individuals who alleged to have encroached highway land, *inter alia*, between the petitioner and the private respondent no.5 but the State authority has not been impleaded in the said civil suit. There is an order of injunction passed in the civil suit at **page 115** to the writ petition in **T.S. No.240 of 2024** but since the State authority is not a party thereto, the same does not bind the State authority.

After considering the rival contentions of the parties and upon perusal of the materials on record it appears that, after receiving the said impugned notice dated **November 6, 2024, Annexure-P6 at page 116** to the writ petition the petitioner has submitted a representation dated **November 12, 2024, Annexure-P7 at page 118** to the writ petition and the same has not yet been disposed of.

Accordingly, the jurisdictional Block Land & Land Reforms Officer (BL&LRO), upon issuing a prior notice to the petitioner and the private respondent no.5, shall make a physical inspection of **R.S. Plot No.215** and shall demarcate the same in their presence and then file a report before the jurisdictional Assistant Engineer (PWD), Construction. Copy of the said report shall be served upon the petitioner and the private respondent no.5.

This exercise shall be carried out and completed by the jurisdictional BL&LRO positively within a period of **five weeks** from the date of communication of this order.

Upon receiving the report from the jurisdictional BL&LRO the jurisdictional Assistant Engineer (PWD) upon issuing a prior notice of hearing of at least **seven days** to the petitioner and the private respondent no.5 and after granting them an opportunity of hearing shall decide the said representation of the petitioner dated **November 12, 2024, Annexure-P7 at page 118** to the writ petition by passing a reasoned order in accordance with law.

This exercise shall be carried out and completed by the jurisdictional Assistant Engineer (PWD), Construction positively within a period of **five weeks** from the date of receiving the report from the BL&LRO and the reasoned order shall be served upon the petitioner and the private respondent no.5 positively within a further period of **one week** from the date of the said reasoned order to be passed by the jurisdictional Assistant Engineer (PWD).

It is made clear that, this Court has not gone into the merits of the rival contentions of the petitioner or the private respondent no.5 and they shall be at liberty to urge whatever points they wish to urge in support of their claims by relying upon whatever records and documents they wish to reply upon before the jurisdictional Assistant Engineer (PWD) but the same shall not travel

beyond the scope of the said representation dated **November 12, 2024**, as referred to above.

It is made clear that, any observation made herein shall not bind the jurisdictional Civil Court where the civil suit is pending between the petitioner and the private respondent no.5 and others and such civil suit shall proceed on its own merit in accordance with law.

It is also made clear that, this order shall not create any right or equity in favour of the petitioner or the private respondent no.5 if they do not succeed to their respective contentions before the jurisdictional Assistant Engineer (PWD), strictly in accordance with law.

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

With the above observations and directions, this writ petition, **WPA 2414 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.)