

July 16, 2025
Sl. No.34
Court No.19
s.biswas

WPA 1399 of 2024

Bijoy Kumar Santra
vs.
Union of India and others

Mr. Golam Mostafa
Mr. Tara Sankar Samanta
Mr. Kazi Asif Iqbal

... for the petitioner

Mr. Pankaj Halder
Mr. Sanatan Panja

... for the State

Mr. Sanajit Kr. Ghosh
Ms. Mary Datta

... for the respondent nos.1 to 3

Mr. Subhadip Biswas

... for the respondent no.14

1. The affidavit of service as filed today on behalf of the writ petitioner is taken on record.
2. Despite service, none turns up on behalf of the respondent nos.10 to 13.
3. At the very outset Mr. Mostafa, learned advocate appearing for the writ petitioner seeks leave to correct the cause title in respect of the respondent no.4.
4. Leave as prayed for is granted. Necessary correction in respect of the respondent no.4 is to be carried out in course of this day, in court by the learned advocate on record for the petitioner.
5. By filing the instant writ petition, the writ petitioner has prayed for issuance of writ/writs against the respondent authorities; more specifically against the respondent nos.1 to 3 for commanding them to remove unauthorized

encroachment over the national highway at the instance of the private respondents.

6. It is submitted by Mr. Mostafa, learned advocate for the writ petitioner that it is the specific case of the writ petitioner that the writ petitioner is the absolute owner of the land particulars of which has been mentioned in paragraph 2 of the instant writ petition, over which the writ petitioner has constructed a two storeyed building.
7. It is further submitted on behalf of the writ petitioner that the private respondents herein have encroached the national highway which is situated in front of the dwelling house of the writ petitioner in such a fashion causing hindrance to easy egress and ingress to the writ petitioner. Drawing attention to page no.24 of the instant writ petitioner being a copy of the representation dated 05.01.2024 as submitted by the writ petitioner, it is contended by Mr. Mostafa that despite submission of the representation with the respondent authorities, the respondent authorities practically sat tight over the matter and did nothing for removal of the encroachment as made by the private respondents.
8. It is thus submitted by Mr. Mostafa that appropriate relief/reliefs may be granted to the writ petitioner in terms of the prayers made in the instant writ petition.

9. Such contention is opposed by Mr. Ghosh, learned advocate for the respondent nos.1 to 3. It is submitted by Mr. Ghosh that the instant writ petition is not at all maintainable in view of the provision of Section 28 of the Control of National Highways (Land and Traffic) Act, 2002 (hereinafter referred to as 'the Act of 2002' in short).

10. It is submitted by Mr. Ghosh that Section 28 of the said Act of 2002 clearly mandates that no person shall have a right to direct access to any national highway.

11. Mr. Halder, learned advocate for the respondent State and its instrumentalities, submits before this court that from the record of right as has been annexed with the instant writ petition, it would reveal that the writ petitioner's land is a waterbody and therefore, the writ petitioner has got no right to construct a dwelling house thereon.

12. Such submission is however disputed by Mr. Mostafa by submitting that it is the specific case of the writ petitioner that such dwelling house has been constructed after making necessary conversion.

13. Mr. Biswas, learned advocate appearing for the respondent no.14 however submits that under the Act of 2002, the Tribunal has been

established and therefore the said Tribunal ought to have heard the grievance of the writ petitioner.

14. On careful consideration of the entire materials as placed before this court and after hearing the learned advocates for the contending parties, this court at the very outset proposes to look to the provision of Section 26 of the said Act of 2002, which is quoted hereinbelow in verbatim:

“26. Removal of unauthorized occupation –
(1)...

(2) When, as a result of the periodical inspection of highway land or otherwise, the Highway Administration or the officer authorized by such Administration in this behalf is satisfied that any unauthorized occupation has taken place on highway land, the Highway Administration or the officer so authorized shall serve a notice in a prescribed form on the person causing or responsible for such unauthorized occupation requiring him to remove such unauthorized occupation and to restore such highway land in its original condition as before the unauthorized occupation within the period specified in the notice.

(3) ...

(4) ...

(5) ...

(6) ...

(7) ...”

15. On careful perusal of the aforementioned provision of Section 26(2) of the said Act of 2002, it would reveal that it is the legislative mandate that in the event as a result of periodical

inspection of highway land or otherwise the highway administration or any authorized officer on its behalf is satisfied that any unauthorized occupation has taken place on highway land, the Highway Administration shall initiate a proceeding under Section 26(2) of the said Act of 2002 for removal of such unauthorized occupation to restore such highway land in its original condition.

16. Keeping in mind the aforementioned legislative mandate, if I look to the factual aspects of this case, it reveals that it is the grievance of the writ petitioner that the writ petitioner's dwelling house is situated on the side of the national highway and it is the further grievance of the writ petitioner that the private respondents have made encroachment of the side of the national highway causing thereby hindrance to the easy access to his own property.

17. Sufficient materials have been placed before this court that the matter has been brought to the notice of the National Highway Authority by the writ petitioner by way of representation dated 05.01.2024.

18. On behalf of the NHAI authority no materials could be placed that the grievance of the writ petitioner was at all addressed.

19. In view of such, this court while disposing of the instant writ petition, directs the respondent no.3 authority to make a physical inspection of the alleged encroached area after serving prior notice to the writ petitioner and the private respondents and in the event in course of such inspection, it is found that there occurred any encroachment over the national highway by any persons i.e. either by the writ petitioner or by the private respondents or by any other persons, he will proceed under Section 26 of the said Act of 2002, soon thereafter.

20. At the time of such inspection, the respondent no.3 authority shall also assess the right of the writ petitioner for accessing the highway as claimed for.

21. The entire exercise as indicated in the foregoing paragraph including disposal of the proceeding under Section 26 of the said Act of 2002 is to be completed within 30 working days from the date of communication of this order.

22. Before parting with, it is however made clear that in the event the NHAI authority in a proceeding under Section 26 of the said Act of 2002 came to a finding for removal of unauthorized occupation of the highway, the NHAI authority shall seek police assistance from the Superintendent of Police, Purba Medinipur and on such requisition

by the NHAI authority, the Superintendent of Police, Purba Medinipur is hereby directed to ensure availability of sufficient members of police personnel for execution of the order for removal of unauthorized occupation, if passed in a proceeding under Section 26 of the said Act of 2002.

23. With the aforementioned observation, WPA 1399 of 2024 is disposed of.

24. Liberty is given to the learned advocate for the writ petitioner to communicate the server copy of this order to the respondent nos.3 and 4(a) authorities.

25. The respondent nos.3 and 4(a) authorities are directed to act on the basis of the server copies of this order.

26. Department is directed to forward a copy of this order to the Superintendent of Police, District-Purba Medinipur for his information and compliance.

27. Urgent photostat certified copy of this order if applied for, be supplied to the parties upon completion of all necessary formalities.

(Partha Sarathi Sen, J.)