

19.03.2025
Item No.31
Crt.No.02
b.r.

WPA 5353 of 2025

Uttam Malakar
-vs-
The Union of India & Ors.

Mr. Siddhartha Sarkar
Mr. Akash Ghosh
..... for the petitioner.

Ms. Sanjukta Bhattacharjee
Mr. Sushil Kumar Mishra
.... For the Union of India.

Mr. Soumitra Bandyopadhyay, Ld. Sr.
Govt.Adv.
Mr. Ram Chandra Guchhait
.... For the State-respondents.

Mr. Sarwar Jahan
Mr. Sumanta Das
Mr. Avilash Tripathi
... for the private Resp. nos. 11 to 13.

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

Mr. Siddhartha Sarkar, learned advocate appears for the petitioner.

Mr. Sarwar Jahan, learned counsel appears for the private respondent nos. 11 to 13.

Mr. Ram Chandra Guchhait, learned State advocate led by Mr. Soumitra Bandyopadhyay, learned Senior Government Advocate appears for the respondent nos. 5 to 10.

Ms. Sanjukta Bhattacharjee, learned counsel appears for the respondent nos. 3 and 4.

The petitioner complains of an alleged unauthorized construction on the National Highway land. The petitioner submitted his representation **annexure P-7 at Page-48** to the writ petition. There is a Title Suit also pending between the petitioner and the private respondents before the jurisdictional Civil Court at Nadia. After the writ petition has been filed, the petitioner has come to know that the National Highway Authority has drawn up a proceeding **under Sub-Section (2) of Section 26** of the **Control of National Highways (Land and Traffic) Act, 2002** and the relevant notice has also been issued in respect of the subject alleged encroachment though the notice produced before this Court shows it was addressed to one **Soumo Modak** who is not a party to this writ petition, a copy of the notice is taken on record.

Learned Counsel, Ms. Sanjukta Bhattacharjee appearing for the NHAI submits that she has received instruction that the encroachment is there as alleged in the writ petition and accordingly she prays a direction upon the local police authority to provide necessary assistance while the encroachment shall be removed.

Mr. Sarwar Jahan, learned counsel appearing for the private respondents submits that the suit filed by the plaintiff is a substantive suit pending before the Civil Court involving the self-same plot of land. In the plaint, the allegation against the private respondents is that they are disturbing the peaceful possession of the

petitioner at **plot Nos. 804 and 805** and accordingly an order of injunction dated **November 6, 2024, annexure p-6 at page-46** to the writ petition was passed by the jurisdictional Civil Court at Nadia restraining the defendants in the suit not to disturb the peaceful enjoyment by the plaintiff. Commissioner has also been appointed for inspection of the subject suit property. The Commissioner's report shows that the plot **no. 803** is the plot of private respondent nos. 12 and 13 and not the National Highway land.

Mr. Jahan has produced a copy of the Civil Court order dated **January 30, 2025**, the same is taken on record. Mr. Jahan further submits that the said Soumo Modak, the noticee, as referred to above is no way connected with the private respondents neither is in occupation or possession of the subject land.

In view of the above, the **respondent no.4** upon giving a prior notice of hearing of at least **seven days** to the petitioner and the private respondents and after granting them an opportunity of hearing shall dispose of the representation of the petitioner, **annexure p-7 at page-48** to the writ petition by passing a reasoned order in accordance with law.

The entire exercise shall be carried out and completed by the **respondent no.4** positively within a period of **six weeks** from the date of communication of this order and the reasoned order shall be communicated to the petitioner and the private

respondents within a further period of **two weeks** from the date of the said reasoned order to be passed.

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 rely upon before the **respondent no.4**.

In the event, the reasoned order confirms the encroachment on the National Highway land, the respondent no.4 and/or the appropriate Authority shall take all necessary and consequential steps to give an immediate effect to the said reasoned order in accordance with law but positively within a period of **six weeks** from the date of the said reasoned order to be passed.

In the event any removal of encroachment is necessary, the same shall take place in accordance with law and in that event, the local police authority shall provide all necessary assistance, if sought for.

It is made clear that this order shall not create any right or equity in favour of either the petitioner or the private respondents, if they do not succeed to their respective claims before the **respondent no.4** in accordance with law.

It is made clear that the order of injunction dated **November 6, 2024 at page-46** to the writ petition is limited only restraining the defendants in the suit from

disturbing into the peaceful possession and enjoyment of the suit property by the plaintiff and from making any kind of construction in the frontal portion of the suit property obstructing the egress and ingress of the plaintiff. The interim order was till **December 17, 2024**.

Both the learned counsel for the petitioner and private respondents submit that the interim order was extended from time to time and is still in existence.

After perusing the interim order, this Court is also of the view that the interim order has got nothing to do with the encroachment, if any, is to be found on the National Highway land and therefore the National Highway Authority shall be free to proceed in accordance with law with the allegation of encroachment.

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 5353 of 2025** stands **disposed of**, without any order as to costs.

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

(Aniruddha Roy, J.)