

26.03.2025
Item No.5
gd/ssd

MAT/351/2025
ARUP KUMAR PAL
VS
STATE OF WEST BENGAL AND ORS.
IA NO: CAN/1/2025

Mr. Soumen Kr. Dutta,
Mr. Subham Dutta
..for the Appellant.

Mr. Soumitra Bandhapadhyay,
Ms. Sucheta Banerjee
..for the State.

Mr. Raghunath Das,
Ms. Monalisa Das
..for the Respondent No.7.

1. This intra court appeal by the writ petitioner is directed against the order dated 28th February, 2025 in WPA 28581 of 2024.

2. We have heard the learned advocates for either of the parties.

3. The said writ petition was filed by the appellant challenging an order passed under Section 10(1) of the West Bengal Highways Act, 1964 (hereinafter referred to as “the 1964 Act”). The ground of challenge in the writ petition is that the authority which initiated the proceedings under the 1964 Act does not have jurisdiction to do so since no Gazette Notification was issued in the Kolkata Gazette conferring any power on the said authority.

4. The learned Single Bench issued an interim direction calling upon the State to produce the copy of the Kolkata Gazette Notification showing that the authority who initiated action had the power to do so under the provisions of the 1964 Act.

5. This direction was complied with by the State and the copy of the entire Notification was placed before the learned writ court.

6. The learned writ court was satisfied that the appellant has not made out any case to interfere with the exercise of jurisdiction by the authority under the 1964 Act.

7. Consequently, the writ petition stood dismissed and the appellant and other unauthorized occupants of the Highway were directed to be evicted in accordance with the order passed by the Sub-Divisional Magistrate, Contai dated November 20, 2024.

8. In this appeal a new ground has been raised by the appellant contending that the road in question has been notified as a National Highway pursuant to a Notification dated 22nd February, 2012 issued by the Ministry of Road, Transport and the Highways, Government of India which was published in the Gazette of India.

9. Therefore, it is submitted that the Notification issued by the State Government in exercise

of the powers conferred under Section 5 of the 1964 Act is without jurisdiction.

10. Firstly, this point was never canvassed before the learned Single Bench in such form.

11. Nonetheless, since we heard the learned advocates for the appellant as well as the learned advocates for the State and the private respondent, we propose to decide that issue.

12. As could be seen from the Notification dated 22nd February, 2012 issued by the Ministry of Road, Transport and the Highways, Government of India, new National Highway 116B was created and it is the Highways starting from Nandakumar on NH-116 connecting Contai, Digha and terminating at Chandaneswar in the State of West Bengal.

13. If we compare this National Highway, the description of the National Highway with that of the Notification issued by the Government of West Bengal in the Kolkata Gazette we find that what has been notified is a link road.

14. This is also evident from the Google Map, copy of which has been produced by the learned advocate appearing for the private respondent who was the complainant.

15. Apart from that the Notification also mentions the length of the link road in Kilometers.

16. Therefore, it is clear that the two roads are different and what is notified by the State Government is the link road and not the National Highway.

17. Therefore, the grounds raised by the appellant for the first time in this appeal has to necessarily fail.

18. That apart, we find that the authority who exercised power under Section 10(1) of the 1964 Act had followed the principles of natural justice, heard the matter at length and after having been satisfied that the petitioner and two others have encroached government property has directed the removal of the illegal construction.

19. The order passed by the Sub-Divisional Magistrate, Contai dated 29.10.2024 cannot be stated to suffer from any error for the court to interfere.

20. Therefore, the learned Single Bench was fully justified in dismissing the writ petition and directing the implementation of the said order dated 29.10.2024.

21. For the above reasons, the appeal fails and the same is dismissed.

22. The authority is directed to implement the order dated 29.10.2024, not later than 11th April, 2025.

23. However, the police assistance is required, the authority shall make appropriate requisition with the Inspector in-Charge, Contai Police Station who shall deploy adequate police force for carrying out the eviction proceedings.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)