

Court No. 2

18.3.2025

(Item No. 7)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 5886 of 2025

Dinesh Kumar Sinha

VS

The State of West Bengal & Ors.

Mr. Sourav Sen, Id. Senior advocate

Mr. Jayanta Kumar Mondal

Mr. Sayantan Rakshit

Ms. Adrisnata Chakraborty

.... For the petitioner

Mr. Suman Ghosh

Mr. Siddhartha Ghosh

.... For the State

Mr. Robiul Islam

Mr. Sk. Jayed Hossain

.... For respondent No. 9

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

Mr. Sourav Sen, learned senior counsel appears for the petitioner.

Mr. Suman Ghosh, learned State advocate appears for respondent nos. 1 to 8.

Mr. Sk. Jayed Hossain, learned advocate appears for private respondent no. 9.

At the outset, Mr. Ghosh, learned State advocate has placed a report dated **March 13, 2025** issued by the jurisdictional Assistant Engineer, P.W.D., the same is taken on record. Copy has already been served upon the learned advocate appearing for the petitioner.

This is the second round of writ litigation concerning the same piece of land.

In the previous round, the writ petition being **W.P.A. 14569 of 2023** was filed alleging encroachment on P.W.D. land at the behest of the present writ petitioner. A co-ordinate bench by its order dated **August 14, 2024, annexure P-3** at **page 41** to the writ petition has disposed of the said writ petition with the following observation and direction:

“If the authority finds that the encroachment is on a public land then the applicable law shall be followed. If the authority finds that the encroachment is on a State highway then the matter shall be referred to the appropriate authority under the appropriate law applicable.

Either party disposing of the matter shall proceed in accordance with law and grant opportunity of hearing to all concerned. Inspection shall be held in presence of the parties before any decision is taken. The report of such inspection shall be handed over to the parties concerned and, thereafter, a final order will be passed upon considering the respective submission of the parties.”

The petitioner states that, pursuant to the direction of the Co-ordinate bench necessary physical inspection of the site had taken place in presence of the parties which included the petitioner but the inspection report has not been furnished along with

the sketch map to the petitioner. Pursuant to a notice of hearing dated **February 17, 2025, annexure P-5** at **page 47** to the writ petition, the petitioner attended the hearing on **February 24, 2025** but the petitioner has no knowledge whether any order was passed after hearing the petitioner and even, if any order has been passed, the same has not been served upon the petitioner. In such situation a proceeding was drawn up under **sub-Section 1 to Section 10** of the **West Bengal Highways Act, 1964 (for short, the 1964 Act)**. A notice dated **February 28, 2025, annexure P-6** at **page 48** to the writ petition was served upon the petitioner.

The petitioner being aggrieved thereby has filed the instant writ petition.

Mr. Sourav Sen, learned senior counsel appearing for the petitioner submits that, pursuant to the direction of the co-ordinate bench dated **August 14, 2024** neither the inspection report with sketch map was served upon the petitioner nor the issue whether 1962 Act or 1964 Act would apply was decided by the authority at the final hearing held on February 24, 2025 but the notice under **sub-Section 1 to Section 10** of the said **1964 Act** was issued and a proceeding was drawn up therein against the petitioner. Learned senior counsel submits that this is a gross violation of the direction of the co-ordinate

bench as also in violation of the basic principle of natural justice. Hence, he submits that the said notice issued under sub-Section 1 to Section 10 of 1964 Act should be set aside and if any final order has been passed should be set aside.

Mr. Suman Ghosh, learned State counsel submits the report upon a copy being served to Mr. Sourav Sen, learned senior counsel for the petitioner. The bunch of documents appended to the report show that an order was passed on **February 28, 2025** after granting an opportunity of hearing to the petitioner on the basis of the inspection report prepared by the jurisdictional B.L.&L.R.O. and the matter was referred before the jurisdictional Assistant Engineer, P.W.D for necessary action as per the 1964 Act. The record further shows that the inspection report with the relevant sketch map has also been prepared by the jurisdictional B.L.&L.R.O. on a proper inspection in presence of the petitioner. Thereafter, hearing was held when the sketch map was produced during the hearing and petitioner has made his submissions and only then the order was passed on **February 28, 2025** which is at **page 17** to the report.

Learned State counsel Mr. Ghosh further submits that, final order has not yet been passed and the petitioner has ample opportunity to take whatever plea the petitioner wants to take at the stage to be

carried out under **Sub-Section 3 to Section 10 of 1964 Act** and then the petitioner shall have another opportunity to take the plea at the stage under **sub-Section 4 to Section 10 of 1964 Act**. Thus, he submits that there is no scope for any interference with the notice dated **February 28, 2025** issued under **sub-Section 1 to Section 10 of 1964 Act**.

In the light of the above, Mr. Ghosh, learned counsel submits that there is no merit in the writ petition and the same should be dismissed.

Mr. Sk. Jayed Hossain, learned counsel appearing for the private respondent no. 9 submits that, it has already decided in presence of the petitioner in course of the inspection of the land that the petitioner is an encroacher on P.W.D. land. In course of the hearing held on **February 28, 2025**, when the petitioner has participated and made his submissions, it was decided with a clear finding by the jurisdictional Sub-Divisional Magistrate that 1964 Act shall prevail in the facts of this case and will be applied accordingly. Consequently, the matter was referred before the jurisdictional Assistant Engineer, P.W.D. who has taken steps under 1964 Act. A statutory appellate provision being there under **sub-Section 4 to Section 10 of 1964 Act**, if the petitioner is aggrieved he can approach before the

appellate authority and not through this writ petition. He also prays for dismissal of the writ petition.

After considering the rival contentions of the parties and upon perusal of the materials on records, the admitted fact appears to be that in presence of the petitioner the physical inspection of the land took place on **February 24, 2025** when the portion of land in question was found to be encroached upon the P.W.D. land. The admitted fact is that pursuant to the notice of hearing served upon the petitioner dated **February 17, 2025** at **page 47** to the writ petition, the petitioner participated in the hearing held on **February 24, 2025** and made his submissions.

The record does not show or establish that the inspection report with the sketch map dated **February 24, 2025** or the order dated **February 28, 2025** was served at the relevant point of time upon the petitioner but the same has only been served in course of the hearing of the writ petition. The record further shows that only notice under **sub-Section 1 to Section 10 of 1964 Act** has been issued upon the petitioner at **page 48** to the writ petition. The order dated **February 28, 2025** which was passed after granting an opportunity of hearing to the petitioner but was not passed in presence of the petitioner as alleged, clearly shows that the jurisdictional sub-Divisional Magistrate gave its finding after considering

the facts and materials before him that 1964 Act would apply.

The physical inspection and the sketch map indisputably shows that an encroachment has been caused at the behest of the petitioner on the P.W.D. land. **Sub-Section 3 to Section 10 of 1964 Act**, *inter alia*, provides that the jurisdictional Magistrate may, on receiving the application and after notice to the person responsible for the encroachment and on taking such evidence, if any, as he thinks fit, make an order authorizing the authority or officer to recover possession and remove the encroachment in question and may, if necessary, direct the Police to assist in the enforcement of the order. Such provision, on a meaningful reading, depicts that a further scope of adjudication is still there before the jurisdictional Magistrate in connection with an issue of alleged encroachment. The issue raised by the petitioner through this writ petition that the inspection report with the sketch map and the said order dated **February 28, 2025** holding the petitioner to be an encroacher on P.W.D. land and the provisions under 1964 Act shall apply, are incidental for adjudicating the encroachment. Therefore, the petitioner can raise said objections in this regard before the jurisdictional Magistrate at the stage under **sub-Section 3 to Section 10 of 1964 Act**.

Sub-Section 4 to Section 10 of 1964 Act, *inter alia*, provides if the person responsible for encroachment is aggrieved by the order of the Magistrate made under sub-Section 3 he may, within the time frame specified, appeal to the jurisdictional District Magistrate. The jurisdictional District Magistrate shall, after hearing the parties, make an order affirming, modifying or setting aside the order made under **sub-Section 3 of 1964 Act**. A meaningful reading of this provision clearly shows that, after travelling through all these stages of **Section 10 of 1964 Act** up to **Section 3**, the petitioner if still is aggrieved, would have a remedy by way of appeal where the petitioner can raise all his objections.

The notice under **Sub-Section 1 to Section 10 of the 1964 Act** is merely a notice initiating a proceeding under **Section 10 of the 1964 Act**. Unless there is a glaring, apparent, ex facie perversity or illegality in exercise of power under **sub-Section 1 to Section 10 of the 1964 Act**, this Court is of the firm and considered view that, such notice shall not be interfered with. Accordingly, if the petitioner feels aggrieved with the said order dated **February 28, 2025** he would have an immediate remedy under **sub-Section 3 to Section 10 of the 1964 Act** before the jurisdictional Magistrate where he can take all his

plea which are incidental for adjudication of the encroachment and then finally in appeal under sub-Section 4 to Section 10 of 1964 Act. The petitioner shall be at liberty to do so, if necessary.

Accordingly, the notice issued under **sub-Section 1 to Section 10 of the 1964 Act, annexure P-6** at **page 48** to the writ petition is **not interfered with**.

Resultantly, this writ petition being **W.P.A. 5886 of 2025** stands **dismissed**, without any order as to costs.

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

(Aniruddha Roy, J.)