

April 8, 2025
Sl. No.13
Court No.19
s.biswas

WPA 7649 of 2025

Rabindra Nath Mondal
vs.
The State of West Bengal and others

Mr. Samiran Mandal
Mr. Nitish Samanta

... for the petitioner

Mr. Soumitra Bandyopadhyay, Sr. Govt. Adv.
Mr. Priyabrata Batabyal

... for the State

Mr. Salil Kumar Maiti
Ms. Dolan Samanta

... for the respondent nos.7 & 8

1. The affidavit of service as filed on behalf of the petitioner is taken on record.
2. As none appears on behalf of the respondent State, this court requests Mr. Soumitra Bandyopadhyay, learned Senior Government Advocate and Mr. Priyabrata Batabyal, learned advocate for the State to appear on behalf of the State.
3. In course of hearing, learned counsel appearing on behalf of the writ petitioner at the very outset draws attention of this court to page no.25 of the writ petition being a copy of the memo dated 30.01.2025 as issued by the respondent no.5 authority, whereby and whereunder the said authority communicated the writ petitioner the following:

“From enquiry it is found that, the respondent Rabindra Mondal is occupying some portion (2ft x 31 ft approx) of Nayanjuli i.e. Govt. Land

(plot no.-447). (shown in the hand sketch map in red colour)."

4. At this juncture, learned counsel appearing on behalf of the writ petitioner took me to page nos.21 to 24 of the instant writ petition being the server copy of the order dated 16.01.2025 as passed by a Co-ordinate Bench in an earlier round of litigation while disposing of WPA 29730 of 2024.
5. It is submitted on behalf of the writ petitioner that by the said order dated 16.01.2025, the said court directed the jurisdictional Assistant Engineer, PWD to issue a notice prior to hearing upon the writ petitioner and the private respondents therein and thereafter giving an opportunity of hearing to decide the representation of the writ petitioner by passing a reasoned order.
6. It is submitted on behalf of the writ petitioner that from the said memo dated 30.01.2025, it would reveal that the respondent no.5 authority unilaterally came to a wrong finding that the writ petitioner is occupying a portion of nayanjuli on government land being plot no.447. It is submitted that the said memo dated 30.01.2025 is contrary to the finding of the Co-ordinate Bench as passed on 16.01.2025.

7. In course of his submission Mr. Bandyopadhyay, learned advocate appearing on behalf of the State respondents took me to the provision of Section 10 of the West Bengal Highways Act, 1964 (hereinafter referred to as 'the Act of 1964'). It is submitted that there is a little scope to interfere with the said memo since respondent no.5 authority acted purely in terms of the legislative provision, more specifically as per Section 10(1) of the said Act of 1964.
8. Learned counsel for the private respondents echoes the version of the learned counsel for the State. He submits that the instant writ petition is premature.
9. For effective adjudication of the instant *lis*, the provision of Section 10 of the said Act of 1964 is required to be looked into and the same is quoted hereinbelow in verbatim.

“10. Removal of encroachment – (1) If any person –

(a) is found to have made an encroachment on any road, street, path, way or land which is declared to be a highway under sub-section (1) of section 3, or

(b) makes an encroachment on a highway in contravention of the provisions of section 8, or

(c) does not remove an encroachment on the expiry or cancellation of any permit granted to him,

the Highway Authority or any officer authorized by him in this behalf shall serve a notice on him requiring him to remove the encroachment and

restore the highway to its original condition within the period specified in the notice.

(2)

(3)

(4)”

10. Keeping in mind the aforementioned legislative provision, if I look to the factual aspects of this case, it reveals to this court that as per direction passed by a Co-ordinate Bench of this court on 16.01.2025, an enquiry was conducted by the respondent no.5 authority securing presence of the writ petitioner and the private respondents during such enquiry and thereafter under cover of memo dated 30.01.2025, the said respondent no.5 authority communicated the respondent no.3 authority regarding his finding in such enquiry with regard to encroachment of the government land.

11. It further appears to this court that copies of the said enquiry report was also forwarded to the writ petitioner as well as the private respondents. It thus appears to this court that the action of the respondent no.5 authority is purely in terms of Section 10(1) of the said Act of 1964 and therefore, by no stretch of imagination it can be said that the previous order dated 16.01.2025 as passed by a Co-ordinate Bench has been violated inasmuch as no materials have been placed

before this court that the respondent no.3 authority has already taken any steps pursuant to the report of the respondent no.5 authority without giving any opportunity of hearing to the writ petitioner.

12. This court thus considers that the instant writ petition is filed merely under apprehension and cannot be entertained at least at this stage.

13. The instant writ petition is dismissed.

14. It is however made clear that this court has not gone into the merits of the memo dated 30.01.2025 and therefore all points with regard to the said memo is kept open.

15. With the aforementioned observation, the instant writ petition is dismissed.

16. Department is directed to forward a copy of this order to the chamber of the Legal Remembrancer, Government of West Bengal, Writers' Building, Kolkata 700001, with a direction to regularize the appointment of Mr. Soumitra Bandyopadhyay, learned Senior Government Advocate and Mr. Priyabrata Batabyal, learned advocate appearing for the State, in connection with the instant matter.

17. All the parties are to act on the basis of the server copy of the order.

(Partha Sarathi Sen, J.)

