

S/L 9
17.06.2025
Court. No. 19
Suwayan

WPA 8060 of 2023

**Mamoni Ghosh & Anr.
Vs.
State of West Bengal & Ors.**

*Mr. Partha Pratim Roy
Mr. Samrat Chakraborty*

...for the petitioners.

*Mr. Dwarika Nath Mukherjee
Mr. Janardhan Mandal*

...for the State.

*Mr. Biswarup Biswas
Ms. Nupur Choudhuri*

...for the private respondents.

1. The affidavit-of-service as filed on behalf of the writ petitioners is taken on record.
2. Mr. Chakraborty, learned Advocate appearing on behalf of the writ petitioners at the very outset draws attention of this Court to paragraph no. 2 of the instant writ petition wherein it has been stated by the writ petitioners that the present writ petitioners and the private respondents are co-owners in respect LR plot no. 1 in Mouza – Tungi under P.S. – Krishnaganj, District – Nadia.
3. At this juncture, Mr. Charaborty took me to page nos. 23 to 27 of the instant writ petition being a copy of the representation dated 16.03.2022 as submitted by the writ petitioner with the respondents/authorities alleging illegal encroachment of the PWD land by the private respondents causing obstruction as to the free egress and ingress to the property of the writ petitioners. It is submitted by Mr. Chakraborty that

despite submission of such representation the respondents/authorities had taken no steps whatsoever and such authorities are practically seating idle over the matter.

4. It is thus submitted by Mr. Chakraborty that appropriate relief/reliefs may be granted to the writ petitioners in terms of the prayers made in the instant writ petition.
5. *Per Contra*, Mr. Biswas, learned Advocate appearing on behalf of the private respondents at the very outset submits before this Court that the instant writ petition is not at all maintainable in view of the reported decision of a Division Bench of this Court in *2014 SCC OnLine Cal 17960 [MAT 963 of 2014 in Avijit Dandapat vs. Sunil Roy]*. It is submitted by Mr. Biswas that in view of the proposition of law as enunciated in the case of *Avijit Dandapat (supra)* it would reveal that the said Division Bench duly interpreted the provisions of Section 10 of the West Bengal Highways Act, 1964 (hereinafter referred to as the 'said Act of 1964') and in doing so it has been held by the Hon'ble Division Bench of this Court that such type of writ petition is not at all maintainable unless the writ petition is in the nature of a public interest litigation.
6. It is further submitted by Mr. Biswas that in the reported decision of *Avijit Dandapat (supra)* it has also been held that it is the duty of the highway authority or any officer authorized by him to remove

encroachment after compliance of formalities as mentioned in Section 10 of the said Act of 1964.

7. Mr. Mukherjee, learned Advocate appearing for the State echoes the version of Mr. Biswas.
8. On careful consideration of the entire materials as placed before this Court and after hearing the learned Advocates for the contending parties it appears to this Court that the reported decision of *Avijit Dandapat (supra)* as cited from the side of the private respondents is distinguishable from the facts and circumstances of the instant case inasmuch as the said appeal has been preferred before the Division Bench against an order which was passed at interim stage where according to the Hon'ble Division Bench ultimate relief was granted to the writ petitioners in the interim stage.
9. In the event, the matter-in-issue as involved in the instant writ petition is viewed from the angle of the constitutional provisions, it appears to this Court that the respondent no. 3/authority comes under the purview of Article 12 of the Constitution of India and, therefore, its action and/or inaction is amenable to the writ jurisdiction of this High Court under Article 226 of the Constitution of India.
10. For effective adjudication of the instant writ petition, this Court proposes to look to the provision of Section 10 of the said Act of 1964 and the same is reproduced hereinbelow:

“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) If the encroachment is not removed within the time specified in the notice, the Highway Authority or the officer authorized under sub-section (1) may make an application to an Executive Magistrate, having jurisdiction over the area, not being the District Magistrate, for removal of the encroachment and delivery of possession of the land encroached upon to the Highway Authority or such officer.

(3) Such Magistrate may, on receiving the application and after notice 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.

(4) If the person responsible for the encroachment is aggrieved by the order of the Magistrate made under sub-section (3) he may, within fifteen days from the date of Magistrate's order, appeal to the District Magistrate. The

District Magistrate shall, after hearing the parties, make an order affirming, modifying or setting aside the order made under sub-section (3)."

11. On careful perusal of the provision of Section 10 of the said Act of 1964 it reveals that admittedly it is the legislative mandate that the highway authority and/or any officer authorized by it is/are empowered to remove encroachment in the event it is found that any person has made encroachment on any highway within the meaning of Section 2(c) of the said Act of 1964.
12. Coming to the factual aspects of this case, it reveals to this Court that the writ petitioners under cover of his representation dated 16.03.2022 brought to the notice of the highway authority regarding alleged encroachment. No material could be placed on behalf of the respondents/State that pursuant to such representation the respondents/authorities more specifically the respondent no. 3/authority had taken any steps. In view of such, this Court holds that for the alleged inaction on the part of the respondent no. 3 the instant writ petition is maintainable.
13. At this juncture, if I again look to the factual aspects of this case it appears to this Court that it is the grievance of the writ petitioner that on account of alleged encroachment made by the private respondents over PWD land their egress and ingress to their property, particulars of which has been mentioned in paragraph no. 2 of the instant writ petition has been obstructed. Such being the position, this Court finds that there

cannot be impediment in allowing the prayer of the writ petitioners by issuing appropriate writ/writs.

14. In view of such, this Court while disposing the instant writ petition directs the jurisdictional BL&LRO i.e.; the BL&LRO, Krishnaganj, District – Nadia to make a field verification after service of prior notice upon the writ petitioners and the private respondents and on completion of such field verification he shall submit the field verification report and/or demarcation report with the respondent no. 3/authority positively within 45 working days from the date of communication of the server copy of this order to him.
15. The respondent no. 3/authority on receipt of such report from the jurisdictional BL&LRO shall cause service of notice upon the writ petitioners and the private respondents and after giving an opportunity of hearing both to the writ petitioners and the private respondents and/or their authorized representatives shall pass a reasoned order on the representation of the writ petitioners and shall forthwith communicate the same to the writ petitioners and the private respondents preferably by mail, if the mail details of the writ petitioners and the private respondents are supplied to him at the time of hearing.
16. The entire exercise as indicated in the foregoing paragraph is to be completed by the respondent no. 3/authority within 120 working days from the date of receipt of the report from the jurisdictional BL&LRO.

17. The time limits as fixed by this Court are mandatory and peremptory.
18. Liberty is given to the learned Advocate-on-Record for the writ petitioners to communicate the server copy of this order to the respondent nos. 2 and 3 for their information and compliance.
19. The respondent no. 2 is hereby directed to forward the said server copy of this order to the jurisdictional BL&LRO for his compliance.
20. Before parting with, it is further directed that while passing the reasoned order in the event the respondent no. 3/authority finds sufficient merit in the representation of the writ petitioners' and/or in the event he finds any other encroachment either by the petitioners or by the private respondents or by any other person, he shall forthwith initiate proceeding under Section 10 of the said Act of 1964 against the unlawful encroacher(s).
21. With the aforementioned observation, the instant writ petition being WPA 8060 of 2023 is disposed of.
22. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Partha Sarathi Sen, J.)