

S/L 5
15.05.2025
Court. No. 19
Sourav

WPA 8137 of 2025

**Balai Jana & Ors.
Vs.
The State of West Bengal & Ors.**

*Mr. Sakya Maity
Mr. Subhas Jana*

...for the petitioners.

*Mr. Soumitra Bandopadhyay, Sr.Govt. Adv.
Mr. Ram Chandra Guchait*

...for the State.

1. The affidavit-of-service as filed today on behalf of the writ petitioners is taken on record.
2. By filing the instant writ petition, the writ petitioners have prayed for issuance of appropriate writ/writs against the respondents/authorities, more specifically, against the respondent no. 4 for quashing and/or setting aside the notice dated 20.01.2025 as issued in the name of the present writ petitioners.
3. By the said notice dated 20.01.2025 which is under challenge in the instant writ petition, the respondent no. 4/authority in exercise of his power under Section 10(1) of the West Bengal Highways Act, 1964 (hereinafter referred to as 'the said Act of 1964' in short) has asked the present writ petitioners to remove the encroachment as allegedly made by the writ petitioners with a rider that the writ petitioners were permitted to place necessary documents before him in support of their alleged lawful occupation.

4. In course of hearing, Mr. Maity, learned advocate appearing on behalf of the writ petitioners at the very outset draws attention of this Court to the copy of the plaint in connection with a title suit by and between the writ petitioners and the private respondent. It is submitted by Mr. Maity that in the said suit as pending before the jurisdictional Civil Judge, a commission was held and from the report of the Commissioner, it would reveal that the suit property which is also the subject matter of the instant writ petition, is situated on a plot which is 'Bastu' in nature. It is thus submitted by Mr. Maity that in view of such observation of the Commissioner who is appointed by a jurisdictional Civil Court, the present respondent no. 4/authority cannot take a contrary view. It is thus submitted that appropriate relief/reliefs may be granted to the writ petitioners in terms of the prayers as made in the instant writ petition.
5. Per contra, Mr. Bandopadhyay, learned Senior Government Advocate appearing on behalf of the respondent/State and its functionaries at the very outset draws attention of this Court to the provisions of Section 10 of the said Act of 1964. It is submitted by Mr. Bandopadhyay that on perusal of Section 10 of the said Act of 1964, it would reveal that the respondent no. 4/authority has merely served a notice under Section 10(1) of the said Act of 1964. It is further submitted by Mr. Bandopadhyay that while issuing such notice, the

respondent no. 4/authority had also given due opportunity to the writ petitioners to justify their alleged lawful occupation over the P.W.D. land.

6. In his next fold of submission, Mr. Bandopadhyay further submits that the instant writ petition is not at all maintainable since the writ petitioners have not exhausted the alternative, efficacious, statutory remedy as available under the said provisions of law, more specifically, under Section 10(3) and Section 10(4) of the said act of 1964.
7. This Court has meticulously gone through the entire materials as placed before this Court and this Court has given its due consideration of the entire materials as placed before this Court.
8. For effective adjudication of the instant writ petition, this Court at the very outset proposes to look to the provisions of Section 10 of the West Bengal Highways Act, 1964 which 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 authorised 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 authorised 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 to the person responsible for the encroachment and on taking such evidence, if any, as he thinks fit, make an order authorising 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 the 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)."

9. On careful consideration of the aforementioned legislative provision, it appears to this Court that Section 10(1) of the said Act of 1964 empowers the respondent no. 4 to issue a notice upon the encroacher in the event, he is of the view that a P.W.D. land has been encroached by some persons. Admittedly, by issuing the notice dated 20.01.2025, the respondent no. 4 has practically discharged his duty in terms of the said statutory provision.
10. The moot question which comes for consideration is as to whether the instant writ petition is at all maintainable at least at this stage.
11. At this juncture, this Court proposes to look to a reported decision of ***U.P. State Spinning Company Ltd. Vs. R. S. Pandey and Another.*** reported in

(2005) 8 SCC 264 wherein the Hon'ble Apex Court while dealing with almost a self-same issue expressed the following:

“11) Normally the High Court should not interfere with an order if there is an adequate efficacious, alternative remedy and in the event, somebody approaches the High Court without availing the alternative remedy provided, the High Court should ensure that he has made out a strong case or that there exists good grounds to invoke the extraordinary jurisdiction.

16).....There are two well-recognized exceptions to the doctrine of exhaustion of statutory remedy. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run to their full proof. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice.....”

12. Keeping in mind the proposition of law as enunciated in the reported decision of ***U.P. State Spinning Company Ltd. (supra)*** if I look to the factual aspects of this Case, it appears to this Court that the respondent no. 4/authority while issuing the notice under challenge was very much within his jurisdiction.
13. On careful consideration of the entire provisions of Section 10 of the said Act of 1964, it reveals to this Court that in the event, the writ petitioners felt aggrieved with such notice, they have alternative,

statutory, efficacious remedy to approach the appropriate authority as per the provision of Section 10(3) of the said Act of 1964. It further reveals from the provision of Section 10(4) of the said Act of 1964 that there is a provision of appeal against the order passed by the authority under Section 10(3) of the said Act of 1964. Within the four corners of the instant writ petition, the writ petitioners have not made out any case as to what prevented them to avail those efficacious, alternative, statutory remedies.

14. On the contrary, it appears to this Court that without availing such efficacious, alternative, statutory remedy, the writ petitioners have straightway approached this Court for exercising plenary jurisdiction of this Court under Article 226 of the Constitution of India.
15. It further appears to this Court that the exceptions to the doctrine of exhaustion of statutory remedy is no way applicable in the instant writ petition in view of the fact that no materials could be placed before this Court on behalf of the writ petitioners that any of the provisions under which the notice under challenge has either been declared *ultra vires* or before the respondent no. 4/authority the writ petitioners were deprived of exercising their right to present their case.
16. On the contrary, it appears to this Court that while issuing the notice under challenge, the respondent no. 4 has granted opportunity to the writ petitioners to

submit their documents to justify their claimed lawful possession.

17. In view of the discussion made hereinabove, this Court finds no merit at all in the instant writ petition.
18. Accordingly, the instant writ petition being **WPA 8137 of 2025** is dismissed.
19. There shall, however, be no order as to costs.
20. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)