

25.04.2025

Item No. Suppl. 01

Crt.No.02

b.r.

WPA 8742 of 2025

Kamrej Mahalder

-vs-

The State of West Bengal & Ors.

Mr. Partha Pratim Roy

Mr. Anirban Das

.... For the petitioner.

Mr. Ayan Banerjee

Mr. Amrita Lal Chatterjee

.... For the State.

Upon urgency being pleaded, as submitted by Mr. Partha Pratim Roy, learned counsel appearing for the petitioner that today is the date fixed for eviction, this writ petition has been taken up for consideration by publishing a supplementary list as the determination of the regular Bench has been assigned before this Court for the day.

Mr. Ayan Banerjee, learned State counsel with Mr. Amrita Lal Chatterjee, learned advocate appears for the State.

Through this writ petition, the petitioner has assailed the impugned order dated **April 9, 2025, annexure p-9 at page-53** to the writ petition passed by the respondent no.6. The order

shows that the petitioner being an alleged encroacher has been requested to make his encroachment free from Government land by a fortnight from the date of the order, i.e., **April 9, 2025**. The impugned order further shows that the jurisdictional Assistant Engineer, PWD was directed to invoke the provisions under **Sub-Section (1) to Section 10 of the West Bengal Highways Act, 1964** and resort to subsequent sections in the event the petitioner and another unknown encroacher as mentioned therein fail to vacate the Government land within a period of fortnight, i.e., **April 25, 2025**.

Mr. Partha Pratim Roy, learned counsel appearing for the petitioner submits the said impugned order is grossly illegal, wrongful and without jurisdiction. He submits that in case of removal of an encroachment from a Government land the first step to be taken to invoke the provision under **Sub-Section (1) to Section 10 of the 1964 Act** and thereafter the statute shall take its own course, following the procedures laid down under **Section 10**. He submits that through the said impugned order, the petitioner has been found to be an alleged encroacher on the

Government land along with others and accordingly the petitioner was granted fortnight time for removing the such encroachment from the Government land, this according to learned counsel is in violation of the entire scheme of the **Section 10 of the 1964 Act**. He submits that unless **Section 10** is invoked, the petitioner cannot be directed to remove the alleged encroachment from the Government land. Therefore, invocation of **Section 10** is the condition precedent and then the petitioner can be directed for removal of encroachment, if any.

Mr. Roy further submits that the correct provisions of law for removal of such an alleged encroachment from the Government land should be under the provisions of the **West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962**.

Mr. Ayan Banerjee, learned counsel appearing for the State referring to the impugned order submits, under the said impugned order the encroachers are requested to remove the necessary encroachment within fortnight from the date of the order and failing thereof proceeding would be initiated under **Sub-Section (1) to**

Section 10 of 1964 Act. The impugned order itself is not an order for eviction. He further submits in the event, **Section 10** is invoked then the petitioner will have ample opportunity to take all the points against the steps taken and to be taken by the State for removal of encroachment.

After considering the rival contentions of the parties and upon perusal of the materials on record and upon careful scrutiny of the impugned order dated **April 9, 2025**, this Court is of the clear view that it is not an order for eviction. It merely is a request to the encroachers to remove the encroachment within a period of **fortnight** as mentioned therein and failing which the jurisdictional authority shall initiate proceeding under **Sub-Section (1) to Section 10 of the 1964 Act.**

The law is well settled that nobody can be evicted without establish procedure of law from any land. Upon reading the impugned order, this Court is of the considered view that the established procedure of law has duly been applied and adopted. After the said impugned order is passed, in the event, the encroachers, *inter alia*, being the petitioner if does not remove

the encroachment from the Government land within **fortnight** as mentioned in the impugned order, the State authority shall be free to initiate proceeding by invoking the provisions under **Sub-Section (1) to Section 10 of the 1964 Act**.

On a meaningful reading of **Section 10** and all its provisions thereunder from the **1964 Act**, this Court is also of the view that, at least at two stages thereunder at **Sub-Section (3) and Sub-Section (4)** stages, the petitioner would have ample opportunity to resist the plea of encroachment taken by the State in accordance with law.

In view of the foregoing reasons and discussions, this Court is of the firm and considered view that this writ petition is devoid of any merit.

Accordingly, this writ petition, **WPA 8742 of 2025** stands **dismissed**, without any order as to costs.

It is made clear that this Court has not gone into the merits of the encroachment and the status of the petitioner and all points are left open to the petitioner to be urged at the appropriate

stage/stages, if the petitioner is permitted to take those points, in accordance with law.

The appropriate State authority shall commence and conclude the proceeding under **Section 10 of the 1964** Act as expeditiously as possible, without any inordinate delay.

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

(Aniruddha Roy, J.)