

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Ct.19 **28.10.25**
Item No.7 Sws.M/ GB

WPA 11783 of 2024

Abdul Suban Ali Khan
Vs
The State of West Bengal & Ors.

Mr. Mainak Bose, Sr. Adv.
Mr. Lakshminath Bhattacharya
Mr. Aniket Nanda
Mr. Deokinandan Sharma
...for the petitioner

Mr. Chandi Charan De, Ld. Addl. Govt. Pleader
Ms. Reshma Chatterjee
....for the State

Mr. Tarun Kumar Das
Mr. Dilip Kumar Shyamal
Mr. Pratap Kumar Yadav
....for the Pvt. Respondent No.12

1. The writ petitioner, the respondent/State and its instrumentalities and the private respondent No. 12 are represented by their respective counsels.
2. The subject matter of challenge in the instant writ petition is the notice dated 01.04.2024, as issued by the respondent No. 5/authority, in terms of provision of Section 26 of the Control of National Highways (Land & Traffic) Act, 2002 (hereinafter referred to as the said 'Act of 2002' in short).
3. At the time of hearing, Mr. Bose, learned senior advocate appearing on behalf of the petitioner at the very outset draws attention of this Court to the copy of the impugned notice dated 01.04.2024, as has

been annexed at pages 68 and 69 of the instant writ petition. Attention of this Court is also drawn to pages 55 to 62 to the writ petition being a copy of the order dated 14.03.2024 as passed by a Division Bench of this Court in MAT 451 of 2024.

4. It is submitted that while passing the said order dated 14.03.2024, the Hon'ble Division Bench noticed that the earlier order for removal of encroachment as passed by the jurisdictional S.D.O on 27.12.2023 is beyond his jurisdiction and thus the same was set aside.
5. It is further submitted by Mr. Bose that by the self-same order dated 14.03.2024, the Hon'ble Division Bench directed the National Highway Administration to consider the representation dated 02.03. 2022 of the private respondent No. 12 in accordance with law and to dispose of the same after giving due opportunity of hearing to all the stake holders.
6. It is submitted by Mr. Bose, learned senior advocate for the petitioner that in utter violation of the judgement and order dated 14.03.2024, as passed in MAT No. 451 of 2024 the notice under challenge dated 01.04.2024 was issued and the same is thus required to be set aside.
7. Per contra Mr. De, learned AGP appearing on behalf of the respondent State draws attention of

this court to the report as filed today. It is submitted that subsequent to the issuance of notice under challenge dated 01.04.2024 a fresh notice was issued by the respondent no.5 authority to all the stake holders including the writ petitioner directing them to be present on a particular day and hour since at the time of demarcation by the jurisdictional BL & LRO the present writ petitioner was found to be encroacher which is disputed by the learned advocate for the writ petitioner.

8. Mr. Das, learned advocate appearing on behalf of the private respondent no.12 submits before this court that in absence of any illegality and/or perversity in the notice under challenge dated 01.04.2024 as issued by the respondent no.5 authority under Section 26(2) of the said Act of 2002, there is hardly any scope to grant any relief to the writ petitioner.
9. It is submitted by Mr. Das that pursuant to the issuance of subsequent notice dated 19.06.2024 upon the writ petitioner, the present writ petition has practically become infructuous.
10. On careful consideration of the materials placed before this court and after hearing the learned

advocates for the contending parties it appears to this court that notice under challenge dated 01.04.24 was issued under the provisions of Section 26(2) of the said Act of 2002 by the respondent no.5 authority.

11. Materials have been placed before this court that a subsequent notice dated 19.06.2024 was issued by the respondent no.5 authority to all the stake holders including writ petitioner in obedience to the judgement and order dated 14.03.2024 as passed in MAT 451 of 2024.
12. In view of such, this court while disposing of the instant writ petition directs the respondent no.5 authority to dispose of the representation dated 02.03.2022 as submitted by the private respondent no.12 herein in the light of the demarcation report of the jurisdictional BL & LRO in terms of the provision of Section 26 (2) of the said Act, 2002 positively within 60 working days from the date of communication of the server copy of this order.
13. It is further directed that in the event while passing the reasoned order the respondent no.5 authority finds sufficient merit in the representation dated 02.03.2022, as submitted

by the private respondent no.12 herein, he shall forthwith take appropriate steps for removal of all unauthorized encroachment over the disputed land in terms of Section 26(2) of the said Act of 2002 and if necessary with the help of the respondent no.11 authority. On getting requisition from the respondent no. 5, the respondent No. 11 authority shall be duty bound to deploy sufficient number of police personnel at the time of execution of work of removal of unauthorized encroachment.

14. The entire exercise in terms of provisions of Section 26 (2) of the said Act of 2002 is to be completed by the respondent No. 5 authority within 15 working days from the date of the passing of the reasoned order by him.
15. The time limit as fixed by this court is peremptory and mandatory.
16. Liberty is given to the learned advocate for the respondent no.12 to communicate the server copies of this order to the respondent no.5 and 11 authorities forthwith and the respondent no.5 and 11 authorities are directed to act on the server copies of this order.

17. Liberty is also given to all the stake holders including the writ petitioner and the private respondent no.12 to file their written notes of submissions before the respondent no.5 authority.
18. With the aforementioned observation, **WPA 11783 of 2024** is **disposed of**.
19. Before parting with it is further directed that the writ petitioner and the private respondent no.12 shall appear before the respondent no.5 authority in terms of the notice dated 19.06.2024 positively on November 7, 2025 at 2 p.m. in person along with their authorized representative, if necessary.
20. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities.

(Partha Sarathi Sen , J.)