

16.05.2025
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Ct.No.7
sdas

WPA 11405 of 2022

Bidyut Roy Chowdhury & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Tanmoy Chowdhury
Mr. Ritoprita Ghosh
....for the petitioners

Mr. Tapash Kumar Mondal
Mr. Partha Sarathi Basu
.... for the ZP, South 24 Parganas

Mr. Sandip Das
.... for the private respondents

Despite service, nobody appears on behalf of the State respondents.

The present writ petition has been filed challenging the legality of the order dated 13th June, 2022, passed by the District Magistrate, South 24 Parganas, in Appeal Case No. 14/Eviction/HW/DM/s-24Pgs. of 2021-22, which upheld the order dated 28th January, 2022, passed by the Executive Engineer, PWD, Diamond Harbour Division, in Case No. 01/Eviction/HW/SDO/DH of 2021-22.

Briefly stated, the key facts leading to the filing of the present writ petition are as that based on a complaint lodged by the private respondents, a proceeding under Section 10 of the West Bengal Highways Act, 1964, was initiated against the petitioners. An inquiry was conducted by the Assistant Engineer, PWD, Diamond Harbour Sub-Division, District –

South 24-Parganas. During the course of the inquiry, it was revealed that the petitioners had encroached upon a portion of public land and constructed a brick-built structure. Since the land was located adjacent to the highway, the respondents proceeded on the assumption that the matter fell within the ambit of the West Bengal Highways Act, 1964. The authority took the view that, by virtue of its proximity to the highway, the land should be deemed to be under the control of the PWD (Roads).

However, as noted previously, following the enquiry, the Assistant Engineer, PWD, concluded that the petitioners had encroached upon the land illegally. Consequently, a notice under Section 10(1) of the West Bengal Highways Act, 1964, was served upon them, directing the removal of the unauthorised construction. Despite receipt of the said notice, the petitioners failed to take any effective steps for compliance. As a result, the matter was referred to the Sub-Divisional Officer, Diamond Harbour Sub-Division, South 24-Parganas (hereinafter referred to as the 'SDO'), by invoking the provisions of Section 10(3) of the West Bengal Highways Act, 1964.

The SDO concluded the proceedings under Section 10(3) of the West Bengal Highways Act, 1964, by directing the petitioners to remove the unauthorized construction from the said land. The petitioners challenged the decision of the SDO by filing a statutory appeal under Section 10(4) of the West Bengal Highways Act, 1964. However, the appeal was

dismissed, thereby affirming the SDO's decision. Aggrieved by the same, the petitioners have filed the present writ petition.

Mr. Chowdhury, learned advocate appearing for the petitioners, submits that the land in question belongs to the Zilla Parishad and, therefore, cannot be said to fall under the administrative control of the PWD (Roads). As such, the invocation of the provisions of the West Bengal Highways Act, 1964, is wholly misconceived and legally untenable. Consequently, he argues that the proceedings initiated and all subsequent actions taken against the petitioners' construction are void ab initio.

Mr. Mondal, learned advocate appearing for the Zilla Parishad, acknowledges that the land belongs to the Zilla Parishad. He further submits that the petitioners are in illegal occupation of the said land and have even constructed a brick-built structure thereon without any lawful authority.

The records reveal that the issue had previously come up before this Court in WPA 14330 of 2021. A Co-ordinate Bench, taking note of the fact that the respondent authorities were proceeding under Section 10 of the West Bengal Highways Act, 1964, directed the concerned authorities to conclude the proceedings. This order was passed in the presence of the petitioners, who at that time did not raise any objection regarding the applicability of the said Act.

The term 'highway' is defined under Section 2(c) of the West Bengal Highways Act, 1964. Section 2(c)(iii) of the Act includes within its ambit any land in the possession of the

State Government or any other authority adjoining a highway, which is used or intended to be used for purposes connected with the highway.

A mere plea of erroneous application of a statutory provision is not sufficient. A person raising such a contention must demonstrate to the Court that, despite having acquiesced to the authority proceeding under the West Bengal Highways Act, 1964, without objection at the earlier stage, he has suffered prejudice. It must also be shown that the mistaken application of the Act has adversely affected his ability to effectively defend himself before both the adjudicating and appellate authorities.

Record further reveals that the fact-finding authorities, namely, the Assistant Engineer, PWD, and the Sub-Divisional Officer (SDO) upon evaluating the evidence presented by the parties, concluded that the petitioners had encroached upon land adjacent to the highway and constructed a brick-built structure from which they are operating their business. The petitioners' appeal was also duly considered and rejected by the District Magistrate, acting in the capacity of the Collector.

In contrast, under the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962, the Collector serves as the adjudicating or fact-finding authority, with the Commissioner of the Division acting as the appellate authority. However, in the present case, since a Coordinate Bench of this Court had already permitted the respondent authorities to proceed under the West Bengal Highways Act,

1964, this Bench cannot sit in appeal over that order. Moreover, it is evident that the competent authorities, acting as fact-finding bodies, have evaluated the evidence on record and arrived at a conclusion, which was subsequently affirmed in appeal by the District Magistrate. In light of these facts, I find no merit or justification in the petitioners' contention.

Therefore, I am of the considered view that the petitioners have not suffered any prejudice, and the application of the West Bengal Highways Act, 1964, has not impaired or rendered them incapable of presenting an effective defence before either the adjudicating authority or the appellate authority.

However, in order to avoid any further confusion, liberty is granted to the petitioners to submit a representation before the Commissioner of the Division, seeking his intervention in the matter in accordance with the provisions of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962.

In the event that the Commissioner of the Division receives such a representation from the petitioners, he shall examine only whether the decisions of the fact-finding authority and the appellate authority were justified. However, before taking any decision on the representation, the Commissioner of the Division shall provide an opportunity for hearing to both the petitioners and the private respondents.

Entire exercise shall be completed within a period of two months from the date of receipt of representation from the petitioners.

It is clarified that if such a representation is filed before the Commissioner of the Division, no coercive action shall be taken against the petitioners until the Commissioner of the Division has made a decision on their representation.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

(Partha Sarathi Chatterjee, J.)