

S/L 20
16.06.2025
Court. No. 19
Sourav

WPA 12007 of 2025

**Mamud Hossain Molla
Vs.
The State of West Bengal & Ors.**

Mr. Arjun Samanta

...for the petitioner.

Mr. Suman Ghosh

Mr. Arka Mondal

...for the State.

1. The affidavit-of-service as filed in Court today is taken on record.
2. The subject matter of the instant writ petition is a proceeding under Section 10(3) of the West Bengal Highways Act, 1964 (hereinafter referred to as 'the said Act of 1964' in short) on account of alleged unauthorized encroachment over the P.W.D. land being L.R. Plot No. 4420 (R.S. Plot No. 4454) by the writ petitioner.
3. In course of hearing, an attempt was made on behalf of the writ petitioner to substantiate that in the said proceeding under Section 10(3) of the said Act of 1964, the Sub-Divisional Magistrate has failed to consider the demarcation report of the jurisdictional BL & LRO which according to the writ petitioner clearly indicates that no encroachment has been made by the writ petitioner over the relevant plot. It is further submitted on behalf of the writ petitioner that in such demarcation report the R.S. plot number differs.
4. Per contra, learned advocate appearing on behalf of the respondent/State at the time of hearing draws

attention of this Court to a photocopy of the order dated 17.04.2025 as passed by the Sub-Divisional Magistrate (Sadar Berhampore, Murshidabad) in connection with a proceeding under Section 10(3) of the said Act of 1964 in respect of unauthorized encroachment of P.W.D. land on L.R. Plot No. 4420 (R.S. Plot No. 4454) which is taken on record. It is submitted that the Sub-Divisional Magistrate while disposing the said proceeding under Section 10(3) of the said Act of 1964 came to a factual finding with regard to the encroachment made by the writ petitioner and such order is an appealable order under Section 10(4) of the said Act of 1964.

5. It is thus submitted on behalf of the respondent/State that the instant writ petition is not maintainable since the writ petitioner has not availed the alternative, efficacious, statutory remedy.
6. On careful consideration of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, it reveals that the jurisdictional Sub-Divisional Magistrate in a proceeding under Section 10(3) of the said Act of 1964 passed an order for removal of the encroachment made by the writ petitioner over P.W.D. land on L.R. Plot No. 4420 (R.S. Plot No. 4454) and such order has been passed on 17.04.2025 and the same was communicated to the writ petitioner on 24.04.2025.
7. This Court is in agreement with the learned advocate for the respondent/State that such an order dated

17.04.2025 as passed by the jurisdictional Sub-Divisional Magistrate is appealable before the jurisdictional District Magistrate. The writ petitioner within four corners of the writ petition has not assigned any reason as to what prompted him to file the instant writ petition instead of filing an appeal before the jurisdictional District Magistrate especially when, the statute provides for filing such appeal.

8. Such being the position and in view of the availability of the alternative, efficacious, statutory remedy, this Court is not inclined to interfere with the order dated 17.04.2025 as passed by the Sub-Divisional Magistrate (Sadar Berhampore, Murshidabad) in connection with File No. 04/2021 in a proceeding under Section 10(3) of the West Bengal Highways Act, 1964.
9. With the aforementioned observation, the instant writ petition being **WPA 12007 of 2025** is dismissed.
10. There shall be, however, no order as to costs.
11. Before parting with, it is, however, made clear that dismissal of the instant writ petition will not preclude the writ petitioner to file an appeal under Section 10(4) of the said Act of 1964 before the jurisdictional District Magistrate, if so advised.
12. 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.)