

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Prasenjit Biswas

***MAT 950 of 2025
With
IA NO: CAN 1 of 2025, CAN 2 of 2025***

***KARTICK MAJI AND ORS.
VS
THE STATE OF WEST BENGAL AND ORS.***

For the Appellants : Mr. Saptangsu Basu, Ld. Senior Advocate
Mr. Anjan Bhattacharya, Advocate
Ms. Anita Shaw, Advocate

For the State : Mr. Lalit Mohan Mahata, Ld. AGP
Ms. Ziaul Haque, Advocate

For the respondent no. 4 : Mr. Gautam Banerjee, Advocate
Mr. Raja Ghosh, Advocate

Heard and Judgment on : July 3, 2025

DEBANGSU BASAK, J.

1. Appeal is at the behest of the writ petitioners and directed against the order dated June 18, 2025 passed in WPA 11523 of 2025.
2. By the impugned order, learned Single Judge negated the reliefs sought for by the appellants who assailed the order passed by the Appellate Authority under the provisions of Section 10(4) of the West Bengal Highways Act, 1964, in the writ petition.

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3. Learned senior advocate appearing for the appellants submits that the appellants are *bona fide* purchasers of a land which was relinquished by the State after initiating acquisition proceedings. He submits that, a portion of the plot which was sought to be acquired was relinquished by the State. The appellants purchased such portion. He submits, on the basis of instructions that, in the event, it is found that the State is the owner of the land then, the appellants will voluntarily remove the construction of the appellants in respect of the plot concerned as also remove themselves from possession thereof.
4. Learned senior advocate appearing for the appellants submits that, initially an order dated June 9, 2023 was passed in WPA 9098 of 2023 in which, the private respondents alleged unauthorized occupation. The authorities initiated proceedings under the Act of 1964. Notice under Section 10(3) was issued. He draws the attention of the Court to the proceedings taken thereof. He submits that on and from a given stage, the authorities wanted to consider the land acquisition map, which was never produced. He submits that, in the absence of land acquisition map it cannot be ascertained as to whether, the plot concerned or a portion of such plot belongs to the State, or not. In such context, he submits that the order passed by the Appellate Authority under the Act of 1964 is bad. Consequently, he submits that, the order of the Appellate Authority under the Act of 1964 should be set aside. Learned Single Judge, according to him, erred in not doing so.
5. Learned senior advocate appearing for the appellants submits that the appellants were not provided with the documents which were sought to be relied upon before the Appellate Authority. He relies

upon **(1991) 1 SCC 588 [Union of India & Ors. vs. Mohd. Ramzan Khan]**, in support of such contention.

6. Learned senior advocate appellants submits that, the municipal authorities mutated the names of the appellants in the municipal records. Such exercise cannot be overlooked by the Court. He points out that, on an application for conversion, the same was allowed. Sanction for building plan was also granted.
7. State and the private respondents are represented.
8. Materials made available on records demonstrate that the private parties were litigating over unauthorized occupation on a State Highway.
9. Initially, private respondents filed a writ petition being WPA 9098 of 2023, which was disposed of on June 9, 2023 requiring the authorities to under the exercise of finding out whether or not there existed any unauthorized occupation on a Highway.
10. Pursuant to and in terms of the directions, the Sub-Divisional Magistrate issued notices under Section 10(3) of the Act of 1964. March 20, 2024 was one of the dates fixed for the hearing. The appellants before us received other notices from the Sub-Divisional Magistrate. Appellants made a representation dated July 11, 2024 before the Sub-Divisional Magistrate.
11. Sub-Divisional Magistrate heard all the parties relevant in the context. Appellants and the private parties were heard. Sub-Divisional Magistrate passed an order dated July 24, 2024 holding that the appellants before us are guilty of occupation of a State Highway.
12. Order dated July 4, 2024 was assailed at the behest of the appellants by way of a writ petition being WPA 18209 of 2024. Such writ

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petition was disposed of by an order dated December 9, 2024 requiring the respondent no. 9 therein to cause physical inspection of the alleged encroachment as mentioned in the notice dated July 4, 2024 and to submit a report with a proper sketch map, if there is any encroachment.

13. Court is informed that the respondent no. 9 in WPA 18209 of 2024 is the concerned Block Land and Land Reforms Officer.
14. Exercise in terms of the order dated December 9, 2024 passed in WPA 18209 of 2024 was under taken. The concerned Block Land and Land Reforms Officer in presence of the private parties found that the plot concerned was a Highway and that, the appellants before us are encroachers thereon.
15. The District Magistrate issued a notice dated January 17, 2025 which was received by the appellants. The appellants also received another notice dated January 27, 2025 from the Block Land and Land Reforms Officer.
16. Being aggrieved by the order dated July 24, 2024 passed by the Sub-Division Magistrate under Section 10(3) of the Act of 1964, the appellants preferred an appeal under Section 10(4) of the Act of 1964 before the Appellate Authority. As noticed before, the Appellate Authority issued notices to the appellants. In any event, since the appellants before us were the appellants before the Appellate Authority, it cannot be said that the appellants were not aware of the notice of the appeal.
17. Appellate Authority passed an order dated May 2, 2025 concurring with the view taken by the Sub-Divisional Magistrate passed order dated July 24, 2024.

18. Both the adjudicating authority and the Appellate Authority on the basis of the materials placed before it, spot inspection undertaken as also the report of the concerned Block Land and Land Reforms Officer are of the unanimous view that the plot concerned is a State Highway and that the appellants are encroachers thereon. Needless to say that the concerned Block Land and Land Reforms Officer also held that the plot concerned belonged to the State and is a part of a State Highway.
19. Overwhelming evidence before the Sub-Divisional Magistrate, Block Land and Land Reforms Officer, District Magistrate and the learned Single Judge establish that the plot over which the appellants claim right is plot of a State Highway. No material is produced before us to hold that such finding is perverse.
20. Mutation of the appellants in the municipal land is canvassed before us as an event to sustain the claim of the appellants in respect of the plot thereon. With the deepest respect, mutation, *per se*, is not a document of title. It merely shows that the appellants are in possession of such plot and that they are liable to pay the rates or taxes in respect of thereof.
21. Despite the appellants knowing that the plot concerned was a State Highway, none of the appellants took any steps to canvass any alleged legal right of the ownership of the plot concerned before any competent forum. None of the findings rendered by either the Sub-Divisional Magistrate or the District Magistrate can be said to be perverse. Independent of these findings, there is a finding by the concerned Block Land and Land Reforms Officer which remains unassailed till date, holding that the appellants are encroachers.

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22. We find from the records that, the appellants were well aware of each and every proceeding in respect of the determination of the issues under the Act of 1964. They were present before the Sub-Divisional Officer. They were also present before the Appellate Authority being the District Magistrate. They were also present before the concerned Block Land and Land Reforms Officer when the issue as to whether unauthorized occupation cropped up. Therefore, we are not in a position to accept the plea that, the appellants were not given the proper papers. Consequently, in our view, the ratio laid down in **Mohd. Ramzan Khan (supra)** is not attracted.
23. In view of such conclusive finding as to encroachment of a State Highway, we do not find any merit in the present appeal.
24. MAT 950 of 2025 along with the connected application being CAN 1 of 2025 are **dismissed** without any order as to costs. CAN 2 of 2025 is allowed.

(Debangsu Basak, J.)

25. I agree.

(Prasenjit Biswas, J.)