

31.07.2025
Item No. 15.
Court No.37.
AB
(Bench ID 266311)

**M.A.T. 1149 of 2025
With
CAN 1 of 2025**

**Nripen Chandra Jana
Vs
The State of West Bengal & Others**

Sk. Rejaul Alamfor the Appellant.

Mr. Aasif Iqbal,
Mr. Debdip Mondal.....for the Respondent No.9.

Mr. Ayan Banerjee.....for the Respondent No.8

Dictated by Arijit Banerjee, J.

1. By consent of the parties, the appeal and the connected application are taken up for hearing together.
2. This appeal is directed against a judgment and order dated July 15, 2025, passed by a learned Judge of this Court in WPA 14278 of 2025, being a writ petition filed by the appellant herein.
3. The appellant allegedly encroached on land belonging to PWD, Government of West Bengal. Proceedings were initiated against him under the provisions of the West Bengal Highways Act, 1964 (in short “the said Act”). This resulted in a report of the Competent Authority which was adverse to the appellant. The appellant challenged such report/ order before the Appellate Authority being the District Magistrate, South 24 Parganas. The statutory

appeal preferred by the appellant under Section 10(4) of the said Act was dismissed by an order dated May 29, 2025. An eviction notice was issued by the Assistant Engineer, Kakdwip Highway Sub-division, Public Works (Roads), Directorate, Government of West Bengal for evicting the appellant/writ petitioner from the encroached portion of PWD Road.

4. Challenging the order of the Appellate Authority and the eviction notice, the appellant approached the learned Single Judge. By the order impugned, the learned Judge dismissed the writ petition. Hence, this appeal.
5. The operative portion of the order impugned reads as follows:

“17. At this juncture, if I look to the report as submitted on behalf of the respondent/State today, it appears to this Court from the demarcation map as prepared by the jurisdictional revenue inspector, it reveals that the writ petitioner has encroached a portion of PWD road measuring about 14’6” X 13’ which is contiguous to his rayati land which has been marked in the said map with the colour ‘green’ and figure ‘F’. 18.

18. As rightly pointed out by Mr. Banerjee that no materials could be placed before this Court that the decision making process of the respondent no. 2/authority is vitiated for non-consideration of some materials which are available on record. Admittedly, this Court sitting in a writ jurisdiction, cannot act as an appellate authority to scrutiny every pros and cons of the order under challenge unless it has been shown that the order under challenge is otherwise perverse and/or the decision making authority has failed to

consider the relevant document which is available before him.

19. In view of the discussions made hereinabove, this Court thus finds no reason to interfere with the order dated 29.05.2025 as passed by the respondent no. 2/authority as well as with the notice dated 25.06.2025.

20. With the aforementioned observations, the instant writ petition being WPA 14278 of 2025 is dismissed.

21. The respondent no. 5/authority is hereby directed to issue a fresh notice for eviction of the unlawful encroachers in the spirit to its earlier memo no. 643/V-8 dated 25.06.2025.”

6. Learned Advocate for the appellant says that in a partition suit being Title Suit No.41 of 2003 filed by the appellant before the learned Civil Judge (Sr. Division), Diamond Harbour, South 24 Parganas, to which the PWD was a party, the appellant's right, title and interest was declared in respect of 21½ decimals of land in the suit property and insofar as the principal defendants in the suit are concerned, they were declared to be raiyats of 52½ decimals of land. Therefore, between the private parties, 74 decimals of land was declared to be raiyati land of those parties. In the plot that was the subject matter of the aforesaid suit, there are 83 decimals of land. Since 74 decimals have been declared to be raiyati land of the appellant and other co-owners, only 9 decimals of land belong to PWD. Beyond 9 decimals of land, the appellant cannot be evicted.

7. The learned Single Judge has duly considered this point. These disputed questions of fact cannot be decided in a writ petition. It is well possible that more than 9 decimals of land has been encroached upon by the appellant. However, we do not record any finding as regards that.
8. We find nothing wrong in the order under appeal. Learned Single Judge duly dealt with the submission made on behalf of the writ petitioner. The learned Judge considered the report filed by the State. As rightly observed by the learned Judge, His Lordship was not acting as an Appellate Court. No infirmity was found in the decision making process. It is well established now that judicial review is concerned with the manner in which a decision has been arrived at rather than the merits of the decision.
9. We, therefore, do not find any reason to interfere with the order impugned.
10. The appeal and the connected application, therefore, stand dismissed.
11. However, we are sure that the State Authorities shall take due care to ensure that the appellant is not evicted from land of which he is the lawful owner.

12. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Om Narayan Rai, J.)

(Arijit Banerjee, J.)