

N.22Sl
151/CL

WPA 16682 of 2025

Sudhansu Karmakar & Ors.

-vs-

The State of West Bengal & Ors.

12.09.2025
SL-03
Ct.19
(S.R.)

Mr. Debjit Mukherjee
Mr. Kaustav Bhattacharya
Ms. Priyanka Jana ... for the petitioners.

Mr. Supratim Dhar, Sr. Adv.
Mr. Santimay Bhattacharyya ... for the State.

1. Affidavit of service as filed today on behalf of the writ petitioners is taken on record.
2. Both the writ petitioners and the respondent/State are represented by their respective counsels.
3. By filing the instant writ petition, the writ petitioners have prayed for issuance of appropriate writ/writs against the respondent authorities, more specifically, against the respondent no.4/authority for quashing and/or setting aside the notice dated 7th July, 2025, a copy of which has been annexed at page no.36 of the instant writ petition as has been issued under Section 10(1) of the West Bengal Highways Act, 1964 hereinafter referred to as the 'said Act of 1964', in short.
4. At the time of hearing, Mr. Mukherjee, learned advocate appearing on behalf of the writ petitioners draws attention of this Court to the copy of the writ petition being WPA 13779 of 2025 as has been

annexed at page nos.37 to 79 of the instant writ petition, at the instance of one Jaydeb Bera @ Joydev Bera and one Abanti Kar. It is submitted that pursuant to the order passed in the said writ petition wherein the present writ petitioners were not parties, the aforementioned notice under challenge was issued to the writ petitioners without affording any opportunity of hearing to the writ petitioners.

5. It is submitted by Mr. Mukherjee that it is the grievance of the writ petitioners that soon after issuance of the said notice dated 7th July, 2025 under Section 10(1) of the said Act of 1964, the respondent no.4/authority is threatening the writ petitioners to evict them from their lawful possession with the help of police.
6. At this juncture, Mr. Mukherjee draws attention of this Court to Section 10 of the said Act of 1964. It is submitted by Mr. Mukherjee that it is the legislative mandate that even an encroacher cannot be evicted without due process of law till conclusion of a proceeding under Section 10(3) of the said Act of 1964. It is, thus, submitted by Mr. Mukherjee that considering the entire scenario, as pleaded by the present writ petitioners, the impugned notice dated 7th July, 2025 may be set aside.
7. Per contra, Mr. Dhar, learned senior advocate

appearing on behalf of the respondent/State duly assisted by Mr. Bhattacharyya, learned advocate submits before this Court that the instant writ petition is devoid of any merit, since the relief as prayed for in the instant writ petition is premature.

8. It is further submitted that no case has been made out on behalf of the writ petitioners to obtain any relief/reliefs, as prayed for.
9. On careful consideration of the entire materials, as placed before this Court, and after hearing the learned advocates for the contending parties, it appears to this Court that for effective adjudication of the instant *lis* a glance to the provisions of Section 10 of the said Act of 1964 is required to be made.
10. Section 10 of the said Act of 1964 is as under: -

“10. Removal of encroachment. – (1) If any person, -

(a) is found to have made an encroachment on any road, street, path, way or land which is declared to be a highway under sub-section (1) of section 3, or

(b) makes an encroachment on a highway in contravention of the provisions of section 8, or

(c) does not remove an encroachment on the expiry or cancellation of any permit granted to him,

the Highway Authority or any officer authorised by him in this behalf shall serve a notice on him requiring him to remove the encroachment and restore the highway to its original condition within the period specified in the notice.

(2) If the encroachment is not removed within the time specified in the notice, the Highway Authority or the officer authorised under sub-section (1) may make an application to an Executive Magistrate having jurisdiction over the area, not being the District Magistrate, for removal of the encroachment and delivery of possession of the land encroached upon to the Highway Authority or such officer.

(3) Such Magistrate may, on receiving the application and after notice to the person responsible for the encroachment and on taking such evidence, if any, as he thinks fit, make an order authorising the authority or officer to recover possession and remove the encroachment in question and may, if necessary, direct the police to assist in the enforcement of the order.

(4) If the person responsible for the encroachment is aggrieved by the order of the Magistrate made under sub-section (3) he may, within fifteen days from the date of the Magistrate's order, appeal to the District Magistrate. The District Magistrate shall, after hearing the parties, make an order affirming, modifying or setting aside the order made under sub-section (3)."

11. On careful perusal of the provisions of Section 10 of the said Act of 1964, it reveals that it is clear legislative mandate that the highway authority or any officer authorized by it is duty bound to serve a notice upon any person, who is found to have made encroachment on any road, street, path way or land, which is declared to be highway requiring him to remove the encroachment and restore the

highway to its original condition.

12. Section 10(2) of the said Act of 1964 further mandates that if such encroachment is not removed within the specified time, as mentioned in the notice under Section 10(1), the officer of the highway authority shall make an application before the Executive Magistrate for removal of the encroachment.
13. Section 10(3) further postulates that the Executive Magistrate on receipt of such application under Section 10(2) and shall make adjudication of such complaint by recording evidence only after notice to the person responsible for the encroachment.
14. Section 10(4) further postulates that in the event, the person responsible feels aggrieved with the order of the Executive Magistrate, as passed under Section 10(3), he has a right to prefer an appeal before the District Magistrate under the provisions of Section 10.
15. Keeping in mind the aforementioned legislative provisions, if I look to the impugned notice dated 7th July, 2025, as issued by the respondent no.4/authority under Section 10(1) of the said Act of 1964, this Court finds no perversity in the said notice inasmuch as the respondent no.4/authority being an officer of the highway authority noticed encroachment at the instance of the writ petitioners

over the PWD road.

16. In course of hearing Mr. Mukherjee strongly contended that in the said demarcation report there is no wishper about the names of the present writ petitioners, as encroachers.
17. It, however, appears to this Court that the present writ petitioners are not at all remediless since, in the event, the writ petitioners failed to comply with the requisition of the notice under Section 10(1) of the said Act of 1964 dated 7th July, 2025, the respondent no.4/authority cannot evict the writ petitioners without resorting the provisions of Section10(2) and Sections 10(3) of the said Act of 1964 wherein i.e. in such proceeding under Section 10(2) and 10(3), the writ petitioners are entitled to get notice.
18. In view of such while disposing the instant writ petition, this Court is not at all inclined to interfere with the notice dated 7th July, 2025 as issued by the respondent no.4/authority in the name of the writ petitioners with a rider that the writ petitioners shall not be evicted from the alleged unlawful possession without serving due notice and without passing a reasoned order in a proceeding under Sections 10(2) and 10(3) of the said Act of 1964 by the respondent no.7/authority.
19. With the aforementioned observations, WPA 16682

of 2025 is disposed of.

20. There shall, however, be no order as to costs.
21. Urgent Photostat certified copy of the order if applied for, be made over to the parties as expeditiously as possible.

(Partha Sarathi Sen, J.)