

S/L 8
06.08.2025
Court. No. 19
Sourav

WPA 17406 of 2025

Sri Tapan Bera & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Mrinal Kanti Ghosh
Mr. Kartik Chandra Kapas
Mr. Chandra Nath Sarkar

...for the petitioners.

Mr. Goutam Malik
Mr. Sudipta Maiti

...for the private respondent.

1. The affidavit-of-service as filed today on behalf of the writ petitioners is taken on record.
2. None appears on behalf of the respondent/State and its instrumentalities, despite service, however, the writ petitioners and the private respondents are represented by their respective learned advocates.
3. By filing the instant writ petition, the writ petitioners have prayed for issuance of appropriate writ/writs against the respondents/authorities, more specifically, against the respondent no. 5/authority for quashing and/or cancelling the order dated 15.07.2025 as passed in a proceeding under Section 10(3) 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. Ghosh, learned advocate appearing on behalf of the writ petitioners draws attention of this Court to Page Nos. 80 and 81 of the instant writ petition, being a copy of the order dated 15.07.2025 as passed by the respondent no. 5/authority

wherefrom it reveals that the present writ petitioner was directed to remove the encroachment within 11.08.2025.

5. Drawing attention to Page No. 89 of the instant writ petition, being a copy of the appeal dated 23.07.2025 as preferred by the writ petitioners with respondent no. 2/authority, it is submitted by Mr. Ghosh that such memo of appeal was received by the office of the respondent no. 2/authority on 24.07.2025, however, the respondent no. 2/authority has not yet fixed any date for hearing of the said appeal as preferred by the writ petitioners.
6. It is submitted by Mr. Ghosh that it is the apprehension of the writ petitioners that in the event, the said appeal is not heard on merit and in the event, no stay order is passed over the order under challenge dated 15.07.2025 as passed by the respondent no. 5/authority, the very purpose of filing appeal under Section 10(4) of the said Act of 1964 would become infructuous.
7. Such contention is, however, vehemently opposed by the learned advocate for the private respondents.
8. It is submitted that no case has been made out on behalf of the writ petitioners for obtaining the relief as prayed for in view of the fact that the writ petitioners have already availed efficacious, alternative and statutory remedy.
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 challenging the order dated 15.07.2025 as passed under

Section 10(3) of the said Act of 1964 by the respondent no. 5/authority, the writ petitioners preferred an appeal under Section 10(4) of the said Act of 1964 with the respondent no. 2/authority.

10. Sufficient materials have been placed before this Court that the respondent no. 4/authority for the reason best known to him has failed to visualize the urgency of the writ petitioners and thus fixed no date of hearing of the said appeal which is why the writ petitioners were prevented from moving a stay application before him (respondent no. 2/authority).
11. As rightly pointed out by Mr. Ghosh that considering the entire situation, the intervention of this writ court is very much necessary as prayed for as otherwise this Court is of considered view that the very purpose of filing of appeal by the writ petitioners under Section 10(4) of the said Act of 1964 would be frustrated.
12. In view of such, this Court while disposing the instant writ petition directs the respondent no. 2/authority to dispose of the appeal dated 23.07.2025 as received by his office on 24.07.2025 within a period of 60 working days from the day of communication of the server copy of this order after giving due opportunity of hearing to the appellant as well as to the respondents securing prior service of notice upon them.
13. It is further ordered that till disposal of the appeal as preferred by the writ petitioners challenging the order dated 15.07.2025 as passed by the respondent no.

5/authority, the operation of the said order dated 15.07.2025 shall remain stayed.

14. The time limit as fixed by this Court is mandatory and peremptory.
15. Before parting with, it is further made clear that since affidavits have not been called for, the allegations made in the instant writ petition are deemed to have been denied.
16. Liberty is given to the learned advocate on record to communicate the server copy of this order to the respondent nos. 2 and 5/authorities.
17. The respondent nos. 2 and 5/authorities are directed to act on the server copy of this order.
18. With the aforementioned observations, the instant writ petition being **WPA 17406 of 2023** is disposed of.
19. 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.)