

Sl. 1
04.12.2025
Court No.19
BP

WPA 17669 of 2025

Krishnendu Bikash Dutta & Anr.
-versus-
The State of West Bengal & Ors.

Mr. Mahim Sasmal
..for the petitioners

Mr. Tapan Kumar Mukherjee, Ld. A.G.P.
Ms. Tuli Sinha
..for the State

Mr. Satyendra Agarwal
Mr. Tarak Nath Sarkar
Mr. Goutam Mallick
..for the respondent
nos. 15, 16 and 17

This matter was heard yesterday (03.12.2025) and an order was dictated in open Court. However, before rising of the Court the learned advocate appeared and submitted that that since he was only informed over telephone an hour prior to the taking up the writ petition for hearing he could not reach at the time of hearing. In the light of such submission, this Court directed this matter to be placed under the heading "To Be Mentioned" today (04.12.2025). The order dictated in Court on 03.12.2025 and not signed is recalled.

The petitioners claim to be the owner of Dag No. 58, J.L. No.109, Khatian No. 3007 and 3008 within Mouza Jayantipur under Police Station Chandrakona in the District of Paschim Medinipur. The petitioners state that adjacent to the aforesaid property of the petitioners there

is a PWD road. The petitioners allege that the private respondents herein have raised an illegal and unauthorised construction by encroaching upon the PWD road thereby obstructing the ingress and egress of the petitioners from their property to the PWD road. The petitioners submitted the representation before the Assistant Engineer, PWD, Digri Sub Division, Paschim Medinipur being the 7th respondent praying for removal of encroachment.

The learned advocate appearing for the petitioners submits that the Assistant Engineer, Public Works Directorate, Digri Sub Division issued a notice dated November 3, 2025 under Section 10(1) of the West Bengal Highways Act, 1964 (for short “1964 Act”) directing the private respondents to remove encroachment. He further submits that no steps thereafter has been taken and the encroachment is yet to be removed.

The learned advocate appearing for the private respondents places before this Court some photographs to indicate that there is a Kali Temple and a Bhog Ghar on the PWD road. He submits that the Kali Temple and the Bhog Ghar is in existence for more than hundred years. He further submits that the private respondents had given a reply to the notice under Section 10(1) of the 1964 Act.

The learned advocate appearing for the private respondents submits that the Temple Committee is a

necessary party for the purpose of adjudication of any dispute that may be referred to the concerned jurisdictional Magistrate. It will be open to the jurisdictional Magistrate to decide as to who are the necessary parties and who are the persons responsible for the encroachment.

Mr. Mukherjee, learned Additional Government Pleader submits that steps in accordance with law shall be taken.

It is not in dispute that a notice under Section 10(1) of the 1964 Act has been issued to the private respondents directing removal of the encroachment on or before November 21, 2025. The private respondents claim to have submitted a reply to such notice. However, the fact remains that the directions contained in the notice under Section 10(1) of the 1964 Act is yet to be complied with.

Section 10(2) of the 1964 Act states that if the encroachment is not removed within the period specified in the notice, the Highway Authority or the officer authorized under sub-section (1) may make an application to an Executive Magistrate, having jurisdiction over the area for removal of encroachment and delivery of possession of land encroached upon to the Highway Authority or such officer.

Section 10 (3) of the 1964 Act provides that the Magistrate may, on receiving the application after notice

to the person responsible for the encroachment and on taking such evidence, if any, as he thinks fit make an order authorizing the authority or officer to recover possession and remove encroachment in question and may, if necessary, direct the police to assist in the enforcement of the order. On a bare reading of sub-section 3 of Section 10 of the 1964 Act it is evident that the said provision contemplates an adjudication on the issue of encroachment upon taking evidence in that regard. The private respondents claim to have submitted a reply to the notice under Section 10(1) of the 1964 Act. Since the matter now appears to have been referred to the Executive Magistrate, such Magistrate is under a statutory obligation to decide the issue of encroachment in accordance with the provisions of sub-section 3 of Section 10 of the 1964 Act.

It will be open to the respective parties to produce evidence in support of their respective claims and counter-claims before the concerned Executive Magistrate and the Executive Magistrate, Paschim Medinipur being the 11th respondent shall after considering the materials /evidences that may be produced by the respective parties pass an order in accordance with law as expeditiously as possible but positively within a period of six weeks from the date of receipt of a server copy of this order.

With the above observations and directions, WPA 17669 of 2025 stands disposed of.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)