

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

19 15.01.2025
Sc Ct. no.2

WPA 18452 OF 2022

Sri Aniruddha Hazra @ Alok Kumar Hazra

Vs.

The State of West Bengal & Ors.

Mr. Salil Kumar Maiti
Mr. Dyutiman Banerjee
Ms. Pinki Saha.

.... For the Petitioner

Mr. Soumitra Bandyopadhyay
Mr. Priyabrata Batabyal.

.... For the Respondent
Nos. 1 to 13

Mr. Tanmay Basu

.... For the Respondent
No. 17

Affidavit-of-service is already on record.

Mr. Dyutiman Banerjee, learned Advocate appears
for the petitioner.

Mr. Soumitra Bandyopadhyay, learned Senior
State Advocate appears for the respondent nos. 1 to 13.

Mr. Tanmay Basu, learned Advocate appears for
the private respondent no. 17.

The rest of the private respondents are not
represented.

Initially the private respondents lodged a
complaint alleging encroachment and unauthorized
construction on the PWD land at the behest of the
petitioner. The issue travelled before a coordinate

Bench in **W.P. 11820 (W) of 2019** filed by this writ petitioner when by an order dated **December 13, 2019, Annexure-P9 at page 42** to the writ petition the coordinate Bench disposed of the writ petition by directing the respondent nos.2 and 4 to dispose of the issue by passing a reasoned order in the manner and mode directed herein. Pursuant to and in terms of the said direction, the impugned order dated **June 22, 2022 at page 67** to the writ petition was passed by the respondent no.4. The impugned order also confirmed that the subject land is a PWD land on which the unauthorized construction was alleged.

Mr. Dyutiman Banerjee, learned Advocate appearing for the petitioner submits that, the moment an allegation is made of an unauthorized construction and encroachment on a PWD land, the **West Bengal Highways Act, 1964** is attracted and the jurisdictional Assistant Engineer (PWD) is the actual jurisdictional authority to decide the issue and not the respondent no.4.

In the instant case the impugned order dated **June 22, 2022** specifically finds that the subject land is a PWD land. The moment the finding is that, the said land is the PWD land then automatically the respondent no.4 has no jurisdiction and authority to decide anything touching the said PWD land and automatically the impugned order dated **June 22,**

2022 becomes unenforceable in law since the order was not passed in exercise of power under the **West Bengal Highways Act, 1964**.

Mr. Soumitra Bandyopadhyay, learned Senior State Advocate also admits that, the subject land is a PWD land.

Mr. Tanmay Basu, learned Advocate appearing for the private respondent no.17 submits that, if an encroachment is actually on the PWD land then it is the PWD authority who should decide in exercise of the power under the **West Bengal Highways Act, 1964**.

After considering the rival submissions of the parties and upon perusal of the materials on record, this Court is of the view that, the finding of the respondent no.4 in the impugned order dated **June 22, 2022** shows that the subject land is a PWD land. Therefore, *prima facie*, the respondent no.4 cannot decide whether there is any encroachment or not on the PWD land in exercise of the power under the **West Bengal Highways Act, 1964**.

In view of the above, the jurisdictional B.L.&L.R.O upon issuing a prior notice to the petitioner and the private respondent nos. 14 to 17 shall cause a physical inspection of the alleged encroachment and shall file a report with a proper sketch map if an encroachment is found. The B.L.&L.R.O shall also give its opinion on

the basis of the available land record whether the subject land is a PWD land or not.

The B.L.&L.R.O. then shall submit copies of the report with the proper sketch map to the petitioner, all the private respondents and the jurisdictional Assistant Engineer, PWD.

This exercise shall be carried out and completed by the jurisdictional B.L.&L.R.O. positively within a period of **three weeks** from the date of communication of this order.

After receiving the report with the sketch map from the jurisdictional B.L.&L.R.O. and if the finding of the B.L.&L.R.O. is that, the subject land is a PWD land then the jurisdictional Assistant Engineer, PWD upon issuing a prior hearing notice of at least **seven days** to the petitioner and all the private respondents and after granting them an opportunity of hearing shall decide the issue by passing a reasoned order in accordance with law.

This exercise shall be carried out and completed by the jurisdictional Assistant Engineer, PWD positively within a period of **six weeks** from the date of receiving the report from the B.L.&L.R.O. The reasoned order shall be communicated to the petitioner and all the private respondents within a further period of **one week** from the date of the said reasoned order to be passed by the B.L.&L.R.O..

If the reasoned order confirms the encroachment then the jurisdictional Assistant Engineer, PWD and/or any other appropriate authority shall take all necessary and consequential steps to give an immediate effect thereto but positively within a period of ***four weeks*** from the date of the said reasoned order to be passed.

It is made clear that, this Court has not gone into the merits of the rival claims of the the petitioner and all the private respondents. They shall be at liberty to urge whatever points they wish to urge in support of their claim by relying upon whatever records and documents they wish to reply upon before the jurisdictional Assistant Engineer, PWD.

It is made clear that, this order shall not create any right or equity in favour of the petitioner or in favour of all the private respondents, if they do not succeed to their respective contentions before the jurisdictional Assistant Engineer, PWD.

It is further made clear that, this writ petition has been taken into cognizance with the restricted prayer made on behalf of the petitioner for ***deciding the issue of encroachment and not for correction of Record of Rights***. For correction of Record of Rights, if the petitioner has any claim, he shall have to proceed before the appropriate authority in accordance with law. This order shall not create any right or equity in favour of the petitioner, if the petitioner does not succeed to his claim

before such appropriate statutory authority seeking correction in Record of Rights.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions, this writ petition, **WPA 18452 of 2022** stands ***disposed of***, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)