

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

**Present : The Hon'ble Justice Sabyasachi Bhattacharyya
&
The Hon'ble Justice Uday Kumar**

MAT 1338 of 2025
with
CAN 1 of 2025
with
CAN 2 of 2025
with
CAN 3 of 2025

Tarak Das
Vs.
State of West Bengal & Ors.

For the appellant	:	Mr. Manabendra Nath Bandyopadhyay Mr. Partha Sarathi Boyal
For the respondent No. 9	:	Mr. Tulsidas Maiti Mr. Snehashis Bala Ms. Namita Basu
Heard on	:	September 16, 2025
Judgment on	:	September 16, 2025

Sabyasachi Bhattacharyya, J. :

1. CAN 2 of 2025 is an application for condonation of delay in preferring the appeal.
2. Upon hearing learned counsel for the parties, we find that sufficient explanation for the delay has been furnished.

3. Accordingly, CAN 2 of 2025 is allowed on contest without costs, thereby condoning the delay in preferring MAT 1338 of 2025.
4. In view of the short points involved, we take up the appeal along with the other applications for hearing.
5. At the outset, learned counsel appearing for the private respondent takes a preliminary objection as to the maintainability of a single appeal against the impugned order, whereby two writ petitions, respectively filed by the appellant and the private respondent, were disposed of.
6. In the writ petition filed by the private respondent, implementation of a report regarding unauthorized occupation of a Government property by the appellant was sought, whereas the appellant's writ petition sought to challenge the same.
7. By the impugned order, the private respondent's writ petition was allowed, while the writ petition filed by the present appellant was dismissed. Thus, there is substance in the contention of the private respondent that two separate appeals ought to have been preferred against the impugned order, whereby both the writ petitions were disposed of. Even if the appellant succeeds against one of the orders, the other component of the order would operate against the appellant and the order passed in the appeal might be rendered self-contradictory.
8. However, since such objection is of a technical nature, we direct the appellant to put in additional court fees, equivalent to another appeal,

within September 17, 2025. Subject to such deposit, the appeal and the applications are being taken up for hearing.

- 9.** Learned counsel for the appellant argues that there is no four-storied building, as reflected in the report filed by the concerned authority, on the land in question. As such, the appellant argues that no steps can be taken against the appellant, since the appellant has not encroached on Government land or made any unauthorized construction on such land at all.
- 10.** Such contentions are controverted by learned counsel for the private respondent, who submits that in the meantime, pursuant to the direction of the learned Single Judge in the impugned order, hearing has been given and a report has already been filed.
- 11.** We find from the impugned judgment that the limited scope of the appellant's writ petition was that the appellant should not be dispossessed without due process of law, whereas the private respondent here, in his writ petition, had sought for removal of illegal encroachment.
- 12.** The learned Single Judge, by the impugned order, has merely directed the added respondent no. 12, i.e., the Sub-Divisional Officer, Uluberia to take appropriate steps as per Section 10(2) of the Act of 1964 (the West Bengal Highways Act, 1964) for removal of the encroachment over the Government land, in terms of the letter of the Assistant Engineer, Uluberia Sub-Division, dated December 19, 2022, within a period of three months from the date of communication of the order of the learned Single Judge.

- 13.** Thus, in effect, the relief sought by the present appellant before the writ court was not denied, inasmuch as due process of law has been directed to be followed, in the context of the prayer of the appellant that the appellant may not be dispossessed without due process of law.
- 14.** In any event, the learned Single Judge has not decided the merits of the contentions of the parties in the proceeding pursuant to Section 10(2) of the 1964 Act, and, as such, it cannot be said that any order touching the rights of the parties has been passed by the impugned order.
- 15.** Hence, strictly speaking, the impugned order does not amount to a “case decided”, which would ideally be the subject to a mandamus appeal.
- 16.** In such view of the matter, we do not find any illegality or jurisdictional error in the order impugned before us.
- 17.** Accordingly, MAT 1338 of 2025 is dismissed on contest without any order as to costs, thereby affirming the order dated November 22, 2024 passed in WPA 5419 of 2023.
- 18.** It is, however, made clear that we have not entered into the legality or otherwise of the construction of the property in dispute and/or the merits of the contentions of the parties in the proceeding initiated under the 1964 Act and it will be open to the appropriate authorities to take steps in accordance with law, pursuant to the direction of the learned Single Judge.
- 19.** Consequentially, CAN 1 of 2025 as well as CAN 3 of 2025 stand disposed of without, however, any order as to costs.

- 20.** Urgent photostat certified copy of this judgment and order, if applied for, be issued to the parties as expeditiously as possible.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)