

S/L 1
05.05.2025
Court. No. 19
Sourav

**WPA 20204 of 2024
With
CAN 1 of 2025**

**Pranab Maity & Ors.
Vs.
The State of West Bengal & Ors.**

*Mr. A. K. Rauth
Mr. A. Mandal
Mr. S. Barik*

...for the petitioners.

*Mr. Ayan Banerjee
Mr. Debangshu Dinda
Mr. Ajeyo Chowdhury*

...for the State.

*Mr. Aasif Iqbal
Mr. Debdip Mondal*

...for the private respondents.

1. This Court has heard the learned advocate for the writ petitioners, the learned advocate for the respondent/State as well as learned advocate for the private respondent nos. 10 and 11 at length.
2. The subject matters of the instant writ petition are the notices dated 12.03.2024 and 25.07.2024 as issued by the respondent no. 6 and respondent no. 7 respectively.
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 nos. 6 and 7 for quashing of the aforementioned two notices.
4. In course of hearing, learned advocate for the writ petitioners at the very outset submits before this Court that the aforesaid two notices dated 12.03.2024 and

25.07.2024 cannot be sustained in the eye of law since while issuing the said two notices under challenge, the respondent nos. 6 and 7 have miserably failed to visualize that the plot in question being L.R. Plot No. 1778, Mouza – Harinbari, J.L. No. 031, P.S. Sagar, District – South 24 Parganas is rayati land and is not a vested land and is not used for the purpose of Highway.

5. It is submitted that on account of such perversity, appropriate relief/reliefs may be granted in terms of the prayers of the instant writ petition.
6. In course of his submission attention of this Court is also drawn to various orders as passed by co-ordinate Benches of this Court whereby and whereunder the said co-ordinate Benches according to the writ petitioners have dismissed the earlier writ petitions as filed by the private respondents.
7. Per contra, Mr. Banerjee, learned advocate appearing on behalf of the respondent/State and its functionaries at the very outset draws attention of this Court to Section 10 of West Bengal Highways Act, 1964 (hereinafter referred to as 'the said Act of 1964' in short). It is submitted by Mr. Banerjee that in terms of Section 10 (3) of the said Act of 1964, the present writ petitioners have an alternative remedy and the writ petitioners have every opportunity to raise their objection in such proceeding as would be initiated under Section 10 (3) of the said Act of 1964 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.

8. It is further submitted by Mr. Banerjee that even under Section 10 (4) of the said Act of 1964, the writ petitioners have further remedy for preferring an appeal before the District Magistrate. It is thus submitted by Mr. Banerjee that in view of the availability of the alternative remedy as well as in view of absence of any perversity in the notices under challenge, this writ Court must be very slow in passing any favourable order in favour of the writ petitioners.
9. Learned advocate appearing on behalf of the private respondent nos. 10 and 11 echoed the submission of Mr. Banerjee, learned advocate appearing for the State.
10. This Court has perused the entire materials as placed before this Court including the two notices dated 12.03.2024 and 25.07.2024 as passed by the respondent nos. 6 and 7 respectively. This Court has also given its anxious consideration over the submissions of the respective learned advocates for the contending parties.
11. This Court considers that for effective adjudication of the instant *lis* the provisions of Section 10 of the said Act of 1964 is required to be looked into and the same is quoted hereinbelow in verbatim.

“Removal of Encroachment:

10. (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 (l) 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 authorized 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 authorized under subsection (I) 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 authorizing 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 15 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).”

12. On careful perusal of the aforementioned legislative provision, if I look to the factual aspects of this case, it reveals to this Court that by issuing a notice dated 12.03.2024, the respondent no. 6 has issued a notice dated 12.03.2024 asking the writ petitioners to remove the encroachment in terms of the provision of Section 10 (1) of the said Act of 1964.
13. On further perusal of the notice dated 25.07.2024, it reveals further that the respondent no. 7 has fixed a date of hearing under Section 10(3) of the said Act of 1964 wherein both the writ petitioners and the private respondents were directed to appear.
14. In view of such and in absence of any material to come to a finding that the aforesaid two notices are either illegal and/or illogical and also in view of the fact that the writ petitioners have miserably failed to prove at least *prima facie* that the aforementioned plot of land is a rayati land, this Court finds no cogent reason to interfere with the aforementioned two notices dated 12.03.2024 and 25.07.2024.
15. In view of such, this Court finds no merit in the instant writ petition.
16. Accordingly, the instant writ petition being **WPA 20204 of 2024** along with the interlocutory application being **CAN 1 of 2025** are dismissed.

17. Before parting with, this Court directs the present writ petitioners as well as the private respondent nos. 10 and 11 and/or their authorized representative(s) to appear before the respondent no. 7/authority positively on May 15, 2025 at 2.00 p.m. and/or also on subsequent dates and time as would be fixed by the respondent no. 7 for participating in the proceeding under Section 10(3) of the said Act of 1964.
18. It is further ordered that in the event the writ petitioners and the private respondents failed to appear before the respondent no. 7/authority on the day and hour as fixed by this Court and/or by the respondent no. 7, the respondent no. 7/authority is at liberty to proceed with the proceeding under Section 10(3) of the said Act of 1964 in absence of the writ petitioners and the private respondents and shall come to a logical conclusion on the same positively within 30 days from the date of such appearance as fixed by this Court.
19. The time limit as fixed by this Court is mandatory and preemptory.
20. Liberty is given to the learned advocate for the private respondent nos. 10 and 11 to communicate the server copy of this order to the respondent nos. 6 and 7 for their information and compliance.
21. The respondent nos. 6 and 7 are directed to act on the server copies of this order.
22. It is made clear that till passing of the final order under Section 10(3) of the said Act of 1964 by the respondent

no. 7, there shall be an order of *status quo* upon the aforementioned plot of land at the instance of the writ petitioners and/or private respondents.

23. Further liberty is given to the respondent no. 7 to vacate the order of *status quo* as passed by this Court in the event, the writ petitioners before this Court made any attempt to drag the proceeding under Section 10(3) of the said Act of 1964.
24. 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.)