

28.04.2025

11
Ct.No.7
sdas

WPA 20096 of 2022

Surajit Sarkar
Vs.
The State of West Bengal & Ors.

Mr. Subhendu Bandyopadhyay
Mr. Arka Mondal
....for the petitioner

Mr. Kartik Chandra Kapas
.... for the State

Supplementary affidavit filed in Court is taken on record.

The present writ petition was initially filed challenging a notice dated 25.08.2022, issued by the Assistant Engineer, PWD, under Section 10(1) of the West Bengal Highways Act, 1964 (hereinafter referred to as the 1964 Act). Subsequently, a supplementary affidavit was filed on behalf of the petitioner to bring the order dated 17.11.2022 passed by the Sub-Divisional Magistrate, Sadar, Hooghly, in the exercise of his powers under Section 10(3) of the 1964 Act on record.

Mr. Bandyopadhyay, learned advocate for the petitioner, vehemently argues that the Assistant Engineer, PWD, issued the notice under Section 10(1) of the 1964 Act without affording the petitioner an opportunity of hearing. Consequently, he contends that the notice, along with all actions taken based on it, is illegal.

The order dated 17.10.2022 indicates that, citing inaction on the part of the Assistant Engineer in considering his representation, one Nasiruddin Mondal filed a writ petition, WPA 233 of 2022, which was disposed of with a direction to the Assistant Engineer to consider and dispose of the representation within the specified time. Following this, the Assistant Engineer conducted an inquiry and concluded that the petitioner had encroached upon land belonging to the PWD. Consequently, a notice under Section 10(1) of the 1964 Act was issued, directing the petitioner to remove the obstruction.

However, despite receiving the notice, the petitioner did not remove the obstruction. Consequently, the Assistant Engineer referred the matter to the Sub-Divisional Magistrate. The Sub-Divisional Magistrate initiated a proceeding, vide. case no. 08 of 2022 under Section 10(3) of the Act and issued a notice to the petitioner, affording him an opportunity of hearing. The petitioner, however, did not avail himself of this opportunity. By an order dated 17.11.2022, the Sub-Divisional Magistrate disposed of the case no. 08 of 2022.

Admittedly, the order passed under Section 10(3) of the 1964 Act is an appealable order, and since the petitioner has an efficacious alternative remedy, no interference is warranted in this writ petition.

However, it is clarified that this order shall not preclude the petitioner from filing a statutory appeal against the order dated 17.11.2022.

It is further clarified that the petitioner shall be at liberty to raise the issue of the pendency of this writ petition to justify the delay in filing the appeal.

(Partha Sarathi Chatterjee, J.)