

S/L 5
04.09.2025
Court. No. 19
Suwayan

WPA 20403 of 2023

Smt. Lakshmi Dolai
Vs.
The State of West Bengal & Ors.

Mr. Ujjal Kanti Jana
Mr. Apurba Kumar Chakraborty
...for the petitioner.

Mr. Ayan Banerjee
...for the State.

Mr. Sujit Bhunia
...for the respondent nos. 8 to 12.

Mr. Amit Meharia
Ms. Paramita Banerjee
Mr. Rohan Raj
...for the respondent no. 13.

1. The report in the form of affidavit as filed on behalf of the respondent no. 13 is taken on record. The exception as filed on behalf of the writ petitioner against such report is also taken on record.
2. The writ petitioner, the respondents/State and its instrumentalities, the added respondent no. 13 i.e. the National Highway Authority of India and the private respondent nos. 8 to 12 are represented by their respective Counsels.
3. By filing the instant writ petition, the writ petitioner has prayed for issuance of appropriate writ/writs against the respondents/authorities more specifically against the Project Director of the National Highway Authority of India that is the respondent no. 13 herein for taking appropriate steps for removal of the unauthorized encroachment as allegedly made by the private respondent nos. 8 to 12 from the front portion

of the residential property of the writ petitioner particular of which has been mentioned in the paragraph no. 2 of the instant writ petition.

4. At the time of hearing, Mr. Jana, learned Advocate appearing on behalf of the writ petitioner submits before this Court that it is the specific case of the writ petitioner that the private respondents have made illegal constructions like stalls, shops and godowns encroaching the national highway in front of the aforementioned residential property of the writ petitioner particular of which has been mentioned in paragraph no. 2 of the instant writ petition in such a fashion which causes blockage to the egress and ingress to the national highway from the residential property of the writ petitioner.
5. It is thus submitted by Mr. Jana that it is a fit case for granting relief/reliefs to the writ petitioner in terms of the prayers made in the instant writ petition.
6. Mr. Raj, learned Advocate appearing on behalf of the added respondent no. 13 in course of his argument draws attention of this Court to page no. 9 of the report as submitted on behalf of the added respondent no. 13. It is submitted by Mr. Raj that in terms of the order dated 31.07.2025 an inspection was held by the respondent no. 13/authority and in course of such inspection it would reveal that the private respondents more specifically respondent nos. 10 and 11 and one Rabindra Nath Dolai who according to the writ petitioner is the private respondent no. 8 have

encroached substantial portions of the national highway authority.

7. Such contention is, however, opposed by Mr. Bhunia, learned Advocate appearing on behalf of the private respondents by saying that in between the writ petitioner and the private respondents civil suit is pending wherein the jurisdictional Civil Court has passed order of injunction.
8. It is thus submitted by Mr. Bhunia that on account of pendency of a civil suit before a Court of law and on account of availing alternative remedy the writ petitioner is not entitled to the relief/reliefs as prayed for.
9. Mr. Banerjee, learned Advocate appearing on behalf of the respondents/State and its instrumentalities in usual fairness submits before this Court that an appropriate order may be passed commanding the respondent no. 13/authority to act in terms of the provisions of Section 26 of the Control of National Highways (Land and Traffic) Act, 2002 (hereinafter referred to as the 'said Act of 2002' in short).
10. On careful perusal of the entire materials as placed before this Court and after hearing the learned Advocates for the contending parties, it reveals to this Court that pursuant to the order passed by this Court on 31.07.2025 the added respondent no. 13 has carried out an inspection and from the outcome of the said inspection it would reveal that a substantial portion of

the national highway has been encroached by some of the private respondents.

11. It further appears to this Court that the instant writ petition is very much maintainable in view of the fact that subject matter of the instant *lis* cannot be called as identical with the civil suit which is pending before the jurisdictional Civil Court.
12. In view of such, this Court while disposing the instant writ petition directs the added respondent no. 13 to cause service of notice under Section 26 (2) of the said Act of 2002 upon the private respondents as well as upon all other stake holders who are found to be encroached the national highway and after service of notice if the said encroachment is/are not removed the added respondent no. 13 is directed to resort to the provisions of Section 26 (6) of the said Act of 2002 forthwith.
13. The entire exercise that is the service of notice upon the private respondents including the other stake holders, if there be any, under Section 26 (2) of the said Act of 2002 shall have to be completed within 30 working days from the date of communication of the server copy of this order and in case of non-fulfillment of the requisition of the said notice/notices the proceeding under Section 26 (6) of the said Act of 2002 shall have to be completed within 150 working days from the date of communication of the server copy of this order either by the added respondent no. 13 or by

the appropriate authority under the National Highways Act.

14. The time limits as fixed by this Court are mandatory and peremptory.
15. Liberty is given to the learned Advocate-on-Record for the writ petitioner to communicate the server copy of this order to the added respondent no. 13 forthwith.
16. The added respondent no. 13 as well as the other authorities of the National Highways Act are directed to act on the basis of the server copy of this order.
17. With the aforementioned observation, the instant writ petition being WPA 20403 of 2023 is disposed of.
18. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Partha Sarathi Sen, J.)