

N.22Sl
151/CL

WPA 20871 of 2025

Sri Shaktipada Das

-vs-

The State of West Bengal & Ors.

16.09.2025
SL-17
Ct.19
(S.R.)

Mr. Chittapriya Ghosh
Mr. Gourab Ghosh

... for the petitioner.

Mr. Supratim Dhar, Sr. Adv.
Mr. Manik Lal De

... for the State.

1. On behalf of the respondent/State a report dated 11.09.2025 is filed after serving a copy of the same to the learned advocate for the writ petitioner. The report dated 11.09.2025 is taken on record.
2. The subject matter of the instant writ petition is the notice dated 25.08.2025, as issued under Section 10(1) of the West Bengal Highways Act, 1964 (hereinafter referred to as the said Act, in short) by the respondent no.4/authority.
3. In course of hearing Mr. Ghosh, learned advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to the page no.41 of the instant writ petition, being a copy of the notice dated 07.05.2025, as issued by the respondent no.4/authority, a copy of which has been forwarded to the writ petitioner wherefrom it would reveal that on the basis of the complaint received from the private respondents herein, the respondent no.6/authority proposed to prepare a demarcation report on the basis

of field verification.

4. It is argued by Mr. Ghosh that pursuant to the said notice dated 07.05.2025, as issued by the respondent no.6/authority, the writ petitioner participated in the said field verification. At this juncture, Mr. Ghosh took me to page no.111 of the instant writ petition, being a copy of the impugned notice dated 25.08.2025. It is submitted by Mr. Ghosh that for the reason best known to the respondent no.4/authority, the respondent no.4/authority while issuing a notice under Section 10(1) of the said Act wrongly came to a finding that Plot No.219 has been encroached by the writ petitioner.
5. At this juncture, Mr. Ghosh draws attention of this Court to page nos.23 and 80 of the instant writ petition. It is submitted by Mr. Ghosh that on conjoint perusal of the page nos.23 and 80 of the instant writ petition, it would reveal that after acquisition of Plot No.219, the said Plot No.219 was settled in favour of the father of the writ petitioner as per the provisions of Section 4 of the West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fishermen Act, 1975. It is, thus, submitted by Mr. Ghosh that since after acquisition of the aforementioned Plot No.219, the said plot was allotted to the writ petitioner's predecessors-in-interest, the respondent

no.4/authority ought not to serve the notice under challenge dated 25.08.2025 indicating that Plot No.219 is an acquired land over which alleged encroachment has been made. Mr. Ghosh further submits that notice dated 25.08.2025 may be quashed, since the said notice suffers from material illegality and irregularity.

6. Such contention is, however, opposed by Mr. De, learned advocate appearing on behalf of the respondent/State duly led by Mr. Dhar, learned senior advocate. It is submitted by Mr. De that in view of the availability of the alternative remedy under Section 10(2) and (3) of the said Act, the instant writ petition is not maintainable.
7. For effective adjudication of the instant *lis*, this Court at the very outset proposes to look to the provisions of Section 10 of the said Act, which reads as under:-

“10. Removal of encroachment. – (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 (1) 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 authorised 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 authorised under sub-section (1) 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 authorising 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 fifteen 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)."

8. Keeping in mind the aforementioned legislative provision, if I look to the factual aspects of this case, it reveals that by the impugned notice dated 25.08.2025, the respondent no.4/authority directed the writ petitioner herein to remove the encroachment from the land, particulars of which has been mentioned in the schedule of the said notice though it has been contended by Mr. Ghosh that one of the plots of land

of the said schedule has been settled in favour of the writ petitioner's father by virtue of the provisions of Section 4 of the West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fishermen Act, 1975, a copy of which has been annexed at page no.23 of the instant writ petition.

9. It appears to this Court that the writ petitioner is not at all remediless in view of the fact that it is the legislative mandate that, in the event, a person does not comply with the requisition of the notice under Section 10(1) of the said Act, the respondent no.4/authority is duty bound to make an application before the jurisdictional SDO under Section 10(2) of the said Act and jurisdictional SDO is equally duty bound to dispose of the said application under Section 10(2) of the said Act by taking evidence.
10. No material has also been placed before this Court that the respondent no.4/authority has invoked his power under Section 10(2) of the said Act as on this day.
11. Such being the position and in view of the fact no case has been made out to substantiate that despite availability of the alternative statutory remedy, writ jurisdiction of this Court is required to be invoked and in absence of any material to substantiate that the notice under challenge has been issued *dehors* to the law or the same has been issued by an authority, who

is not authorized to issue the same, this Court considers that the instant writ petition is not maintainable before this Court at least at this stage.

12. With the aforementioned observations, the instant writ petition being **WPA 20871 of 2025** is dismissed.
13. Before parting with, it is made clear that while disposing the instant writ petition this Court has made no observation with regard to the alleged title of the writ petitioner over the alleged encroached of plot of land, particulars of which has been mentioned in the schedule of the notice dated 25.08.2025, and, therefore, all points in this regard are kept open.
14. It is further made clear that since affidavits have not been called for, the allegations made in the instant writ petition are deemed to have been denied. There shall, however, no order as to costs.
15. 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.)