

S/L 18
19.09.2025
Court. No. 19
Swayan

WPA 22338 of 2025

Sri Kanailal Das
Vs.
The State of West Bengal & Ors.

Mr. Debasish Das

...for the petitioner.

Mr. Swapan Banerjee
Mrs. V. Chakraborty

...for the State.

1. The affidavit-of-service as filed today on behalf of the writ petitioner is taken on record.
2. The subject matter of the instant writ petition is a notice under Section 10(1) of the West Bengal Highways Act, 1964 (hereinafter referred to as the 'said Act' in short) dated 08.09.2025 as issued by the respondent no. 13/authority. For effective adjudication of the instant writ petition, this Court at the very outset proposes to look to the provision 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, pathway 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 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 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, made 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 fifteen days from the date of the Magistrate's order, appeal to the District Magistrate. The District Magistrate shall, after hearing the parties, made an order affirming, modifying or setting aside the order made under sub-section (3)"

3. On careful perusal of the aforementioned legislative provision it reveals that it is the legislative mandate that in the event the alleged encroacher fails to comply with the requisition of notice under Section 10(1) of the said Act the respondent no. 13 herein shall have to make an application under Section 10(2) before the

respondent no. 8/authority for adjudication under Section 10(3) of the said Act and such adjudication is to be made by recording evidence.

4. The said Section 10 further mandates that in the event any person feels aggrieved with the order of the Sub-Divisional Magistrate as passed under Section 10(3) of the said Act his remedy lies under Section 10(4) by way of preferring an appeal before the jurisdictional Magistrate.
5. Coming to the factual aspects of this case, it appears to this Court that the instant writ petitioner has alternative efficacious statutory remedy and in absence of any case made out for invoking the high prerogative writ jurisdiction of this Court despite availability of alternative efficacious statutory remedy this Court is not inclined to interfere with the notice under challenge especially when this Court finds no material at all to substantiate that the respondent no. 13/authority is not authorized to issue such notice.
6. With the aforementioned observation, WPA 22338 of 2025 is dismissed.
7. However, there shall be no order as to costs.
8. It is, however, made clear that while dismissing the instant writ petition this Court has not gone into the merit of the instant writ petition and since affidavits have not been called for the allegations as made in the instant writ petition are deemed to have been denied.

9. 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.)