

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 24556 of 2025

Ayub Alam & Anr.
Versus
The State of West Bengal & Ors.

Appearance:
Mr. Supratim Dhar, Sr. Adv.
Mr. Dhananjay Nayak
Ms Tanwishree Mukherjee
..... for the petitioners

Mr. Vivekananda Bose
Mr. Kapil Guha
..... for the State

Heard on: 18th November, 2025.

Judgement delivered on: 18th November, 2025.

The Court.:-

1. This application under Article 226 of the Constitution of India is at the instance of the persons seeking permission to make encroachment under Section 8 of the West Bengal Highways Act, 1964.
2. The petitioners claim to have constructed a shop room on Plot No. 3766, within Mouza Habaspur, JL No. 55 and running business therefrom after obtaining necessary licenses and permission from the concerned authorities. Alleging encroachment upon the highway, a writ petition being WPA 11691 of 2025 was filed by one Milan Sk., which was disposed of

by an order dated September 9, 2025 by directing the respondent authorities to pass a reasoned order on the representation submitted by the writ petitioner therein in the light of the demarcation report dated 2nd September, 2025, within the time limit as indicated in the said order. Pursuant to the said order, a hearing was conducted and an order dated 18th September, 2025 was passed by the Assistant Engineer, Berhampore Highway Sub-Division directing that the proceeding under Section 10 of the West Bengal Highways Act, 1964 will be initiated for removal of encroachment from the Government land. Pursuant to the said order, a notice dated October 14, 2025 under Section 10(1) of the 1964 Act was issued to the petitioners directing the petitioners to remove all illegal encroachments as indicated in the report of the concerned Block Land & Land Reforms Officer within fifteen days from the date of receipt of the said letter. In the meantime, the petitioners submitted a representation before the concerned Assistant Engineer praying for grant of permission to enable the petitioners to reside in the said plot of land, which is pending for consideration before such authority.

3. Alleging inaction on the part of the respondent authorities, the petitioners have approached this Court.
4. Mr. Supratim Dhar, learned Senior Counsel, appearing for the petitioners places reliance upon Section 8 of the 1964 Act in support of his contention that Section 8 of the 1964 Act gives right to a person to make an encroachment on the highway and for such purpose, the petitioners have applied for permission, which is kept pending by the concerned respondent authority. By placing reliance upon the provisions of Section 10(4) of the 1964 Act, Mr. Dhar submits that only upon satisfaction of the conditions specified under sub-Sections (1), (2) and (3) of Section 8, notice under Section 10(1) can be issued. He further submits that the respondent authorities issued a notice under Section 10(1) of the 1964 Act

without recording any satisfaction as to the fulfilment of the requirements under sub-Sections (1), (2) and (3) of Section 8 of 1964 Act. Mr. Dhar further submits that the notice under Section 10(1) has to be issued by an officer who was not duly authorised to issue the notice under Section 10(1) of the 1964 Act. He further submits that no declaration of highway under Section 3(1) of the 1964 Act was made in the instant case.

5. Learned Advocate appearing for the State seriously disputes the submission made by Mr. Dhar. He submits that the petitioners raised a construction on a highway within the meaning of Section 2(c) of the 1964 Act without obtaining any permission in writing from the concerned authority. He further submits that after the demarcation was made, it was found that the petitioners have made construction on the Bhagwangola-Akheringanj Road, which is a highway and in view thereof, notice under Section 10(1) of the 1964 Act was issued.
6. Heard the learned Advocates for the parties and perused the materials placed.
7. It has been specifically admitted in paragraph 5 of the writ petition that the petitioners took physical possession of the portion of a land comprised in LR Plot no.3766, within Mouza Habaspur, under Bhagwangola Police Station in the District of Murshidabad raised a pucca residential structure thereon and the petitioners have been peacefully residing therein. The petitioners prayed for permission to reside on the aforesaid plot by submitting a representation dated September 23, 2025.
8. After going through the said representation, it appears that no permission in writing was taken by the petitioners for construction of a house on LR plot no. 3766.

9. For the purpose of effective adjudication of the dispute involved in this writ petition, it would be beneficial to take note of the provisions of Sections 8 and 10 of the West Bengal Highways Act, 1964. Sections 8 and 10 of the Act, 1964 are reproduced hereinbelow:

“Section 8. (1) No person shall make any encroachment without obtaining permission previous permission in writing of the Highway Authority or any officer not below the rank of an Assistant Engineer authorised by him in this behalf.

(2) The Highway Authority or such officer may, having due regard to the safety and convenience of traffic and subject to such conditions and on payment of such fee or other charge as may be prescribed, grant a permit to any person to use or occupy temporarily any land appertaining to or adjoining a highway for such period as may be specified therein.

(3) Any person holding a permit granted under sub-section (2) shall, if required, produce it for inspection before the Highway Authority or any officer authorised under sub-section (1) and shall on the expiry of the period specified therein restore the land under his use or occupation to its original condition and make over possession thereof to the Highway Authority or the officer referred to in subsection.”

“Section 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 (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 subsection (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)."

10. Section 8 of the 1964 Act deals with permission to make encroachment. Sub-Section (1) of Section 8 starts with a negative clause. It states that no person shall make any encroachment without obtaining previous permission in writing. The word "permission" is qualified by the word "previous". Thus, it implies that a prior permission in writing has to be obtained by a person who intends to make any encroachment of the highway. The factors that are to be taken into consideration for grant of such permission/permit and the conditions for grant of such permit, have been specified in sub-Section (2) of Section 8. After reading the provisions of sub-Section (2) of Section 8, this Court is of the considered view that, while granting permission to any person to use or occupy any land appertaining to or adjoining a highway, due regard to the safety and convenience of traffic is to be taken into consideration. The said permit can be subject to such conditions that may be indicated

in the order granting permission and necessary fees or charges as prescribed, may be charged for grant of such permission. Sub-Section (2) of Section 8 further provides that such permission shall be a temporary one and the period for grant of such permission has to be specified in the order granting permission in writing. Thus, it is evident that the permit to make an encroachment cannot be for a permanent purpose. It can be granted only for a temporary purpose and the period for which the permit shall remain in force has to be specified in the said permission.

11. In the case on hand, the petitioners admitted to have made construction of a house and are claiming to be residing thereon. The object of constructing a house cannot be said to be a temporary purpose as provided under Section 8(2) of the 1964 Act. That apart, the petitioners have not obtained prior permission in writing before making such construction but have applied for post-facto permission after having constructed a house thereat.
12. As observed hereinbefore, the word “permission” is qualified by the word “previous”, which implies that a prior permission in writing and not post-facto permission is contemplated under Section 8(1) of the 1964 Act. It is well-settled that a statutory authority has to act within the four corners of a statute and cannot exercise power that is not conferred upon such authority by the said statute. There is no provision in the 1964 Act for regularising a construction made upon encroachment of a highway or Government road.
13. This Court is, therefore, not inclined to accept the submission of Mr. Dhar that there was inaction on the part of the respondent authorities in not considering the prayer of the petitioners for grant of permission for residing in the property in question.
14. Section 10 of the 1964 Act deals with removal of encroachment. Sub-Section (1) of Section 10 states that if any person is found to have made an encroachment on any road, street, path, way or land which is declared to be the highway under sub-Section (1) of

Section 3 or makes an encroachment on a highway in contravention of the provisions of Section 8 or does not remove any and encroachment on the expiry or cancellation of any permit granting 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 encroachments and restore the highway to the original condition within the period specified in the notice.

15. Pursuant to the order passed by the co-ordinate Bench in an earlier round of litigations, a demarcation was made by the concerned Block Land & Land Reforms Officer and in the sketch map it was indicated that the plot no. 3766 is within Mouza Habaspur is on Bhagwangola-Akheriganj Road and an area measuring 28 feet x 14 feet = 392 sp. feet on Government land, has been illegally encroached by the petitioners and a pucca shop room has been made thereon.
16. The Assistant Engineer heard the contesting parties on September 18, 2025. In the order dated September 18, 2025, it was specifically recorded that in the hearing, the petitioners have admitted that they have made a shop upon PWD Government land. Such factual recording in the order dated September 18, 2025, could not be controverted by Mr. Dhar, learned Senior Counsel in course of hearing of this writ petition.
17. On the basis of the materials available as well as the admission of the petitioners in course of hearing before the Assistant Engineer, the concerned Assistant Engineer passed the order dated September 18, 2025 upon holding that the proceedings under Section 10 will be imposed for removal of encroachment from the Government land.
18. Pursuant to the said order, the notice under Section 10(1) of the West Bengal Highways Act, 1964 was served upon the petitioners directing the petitioners to remove the illegal encroachment. This Court has already held that there is no scope to consider the prayer for permission to reside on the Government land. This Court finds that the respondent

authorities followed the due process of law and after finding that there has been an encroachment of a highway rightly issued the notice under Section 10(1) of the 1964 Act.

19. Now, this Court is to consider the submission of Mr. Dhar as to whether the authorities issuing the notice under Section 10(1) of the 1964 Act was duly authorised for such purpose.
20. From the notice dated October 14, 2025 issued under Section 10(1) of the 1964 Act, it is evident that the Assistant Engineer was acting under the delegated power. Section 10(1) of the 1964 Act provides for issuance of a notice under Section 10(1) by an officer authorised by the Highway Authority. The petitioners have not challenged the delegation made in favour of the authority issuing the notice under Section 10(1) of the 1964 Act in this writ petition. In the absence of such pleading this Court is not inclined to accept the submission of Mr. Dhar that such person issuing the notice was not duly authorised to act in terms of Section 10(1) of the 1964 Act.
21. In the light of the observations as made hereinabove, this Court is not inclined to grant any relief to the petitioners. Accordingly, WPA 24556 of 2025 stands dismissed.
22. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Hiranmay Bhattacharyya, J.)