

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 27090 of 2025

Arun Adhikary @ Kachi Adhikari & Ors.
Versus
The State of West Bengal & Ors.

Appearance:
Mr. Ashim Kr. Routh
Mr. Subhayan Barik
..... for the petitioners

Mr. Lalit Mohan Mahata, AGP
Mr. Rudranil De
..... for the State

Heard on: 2nd December, 2025.

Judgement on: 2nd December, 2025.

The Court:-

1. The affidavit of service filed in Court is taken on record.
2. The petitioners claim to be in occupation of various portions of the government lands being Dag No. 318, within Mouza Sahebkhani Keranibar, under Police Station Contai, in the District of Purba Midnapore by erecting several temporary structures thereupon. The petitioners are claiming to be running the business from the said temporary structures for maintaining the livelihood of the petitioners and their family members for more than 20 years.

3. Since an allegation of encroachment upon the PWD road was made, a proceeding under Section 10(1) of the West Bengal Highways Act, 1964 (in short '1964 Act') was initiated and a notice for removal of encroachment was served upon the encroachers. Since in spite of service of notice for removal of encroachment, the encroachers did not remove their encroachment, the matter was referred to the concerned Magistrate. The Magistrate passed an order under Section 10(3) of the 1964 Act for removal of the encroachment and for recovery of possession. Being aggrieved by such order, the petitioners filed an appeal under Section 10(4) of the 1964 Act. The District Magistrate, Purba Medinipur, passed an order on 17th July, 2025 thereby affirming the order passed by the Magistrate under Section 10(3) of the 1964 Act.
4. Being aggrieved by the order passed by the authorities under Sections 10(3) and 10(4) of the 1964 Act, the petitioners filed a writ petition being WPA 17750 of 2025, which was ultimately dismissed by the coordinate Bench by an order dated September 19, 2025.
5. In the meantime, the petitioners sought for permission to encroach upon the PWD road by submitting a representation before the concerned District Magistrate dated 15th September, 2025.
6. The learned Advocate appearing for the petitioners submits that Section 8 of the 1964 Act enables the authority to grant permission to make encroachment. He further submits that the petitioners duly prayed for permission under Section 8 of the 1964 Act along with documents and papers in support of the claim for permission but no decision on such representation has been communicated by the concerned authority to the petitioners till date. The learned Advocate has submitted that a direction be

passed upon the concerned District Magistrate to take a decision on the representation of the petitioners within a stipulated time limit and pending such decision, no coercive steps be taken by the authorities against the petitioners.

7. Mr. Lalit Mohan Mahato, learned Additional Government Pleader submits that the authorities initiated a proceeding under Section 10 of the 1964 Act which culminated with passing of the order under Section 10(4) of the 1964 Act. The petitioners challenged such order in a writ petition, which ultimately stood dismissed. He further submits that in view of the order passed under Section 10(4) of the 1964 Act, there is no scope to consider the prayer of the petitioners praying for permission to make encroachment. He further submits that a person erecting a structure unauthorisedly without obtaining previous permission in writing from the authorities cannot approach the authorities for grant of permission under Section 8 of the 1964 Act.
8. Heard the learned Counsel for the parties and perused the materials placed. After going through the statements made in the representation as well as the averments made in the writ petition, this Court finds that the petitioners have admittedly constructed temporary structures on the government property, which is PWD road. Admittedly, the petitioners are carrying on business therefrom for the purpose of their livelihood for more than 20 years. The petitioners have also prayed for permission to enable them to carry on business from the said temporary structures. Thus, it is evident that the structures were erected without any previous permission in writing from the concerned authorities and the purpose for which the petitioners are seeking permission is permanent in nature and cannot be said to be for temporary purpose.

9. Section 8 of the 1964 Act starts with negative clause. It states that no persons shall make any encroachment without obtaining previous permission in writing by the Highway authorities or any officer not below the rank of Assistant Engineer authorised by him in this behalf. The word “permission’ used in Section 8 of the 1964 Act is qualified by the word ‘previous’ appearing before the word ‘permission’ and the words ‘in writing’ appearing after the word ‘permission’ which implies that the previous permission in writing is to be obtained before a person can make encroachment upon the PWD road. There is no provision for grant of post facto permission in the said statute.
10. The provisions laid down under Sections 8 and 10 of the 1964 Act fell for consideration before this Court in the case of Ayub Alam and Anr. Vs. State of West Bengal & Ors. in WP 24556 of 2025, judgment delivered on November 18, 2025.
11. In the said decision, it was held thus:

“(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.

(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.

(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.”

12. In the light of the aforesaid discussions, this Court holds that the petitioners could not demonstrate any legal right for consideration by the authorities as contained in the representation dated September 15, 2025. In the light of the observations made hereinbefore, this Court is of the considered view that the authorities cannot be faulted for not considering the prayer contained in the representation.
13. It is not in dispute that the proceeding for removal of encroachment has reached the stage of Section 10(4) and the petitioners were unsuccessful in their attempt to challenge the said order. From the materials available on record, it appears to this Court that the order passed under Section 10(4) of the 1964 Act attained finality.
14. However, this Court is not inclined to make any observation in that regard as the issue involved in the writ petition is only related to the grant of permission to make encroachment under Section 8 of the 1964 Act. For all the reasons as aforesaid, this Court is not inclined to grant any relief to the petitioners.

15. Accordingly, the writ petition being WPA 27090 of 2025 stands dismissed.
However, there shall be no order as to costs.
16. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Hiranmay Bhattacharyya, J.)