

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

BEFORE:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 1518 of 2025

**Nanda Ghoroi @ Nandalal
Versus
The State of West Bengal & Ors.**

Appearance:

Mr. Gopal Ch. Ghosh, Sr. Adv.

Mr. Rajkrishna Mondal

Ms. Parnashree Samnata

... for the petitioner

Mr. Chandi Charan De, Ld. AGP

Mr. Airban Sarkar

... for the State

Ms. Surovi Ghosh

...for the respondent no.5

Mr. Udaynarayan Betal

...for the respondent nos.6&7

Heard on: 09.01.2026 and 29.01.2026.

Judgement on: 5th February, 2026.

The Court.:-

1. The supplementary affidavit filed in Court is taken on record.
2. The petitioner claims to be recorded owner of a plot of land, being Dag No. 67/980, Khatian No. 212, within Mouza Jatadharpur, under Police Station Dasput, in the District of Midnapore (now Paschim Medinipur).

3. The petitioner states that the wife of Madan Mohan Dinda was inducted as a tenant in respect of a shop room constructed by the petitioner on the aforesaid property. A broiler chicken centre was being operated by Madan Mohan Dinda from the said shop room.
4. The private respondent nos. 6 and 7 alleged that the private respondent no.5 i.e. Madan Mohan Dinda, erected a structure by encroaching upon the PWD road. Alleging inaction on the part of the respondent authorities, the respondent nos. 6 and 7 filed a writ petition which was disposed of by a coordinate Bench by directing the concerned authorities to take steps in accordance with law.
5. Pursuant thereto, a notice under Section 10(1) of the West Bengal Highways Act, 1964 (hereinafter referred to as 'Act of 1964') was issued. Since the alleged encroachment was not removed pursuant to the said notice, the matter was referred to the concerned Sub-Divisional Magistrate.
6. The Sub-Divisional Magistrate passed an order dated 15th December, 2025 holding that the fifth respondent namely, Madan Mohan Dinda, has encroached upon the Government land and blocked the ingress and egress of the respondent nos. 6 and 7. By the said order, the fifth respondent was directed to remove the unauthorised encroachment from the Government land of RS plot No. 87/980, failing which, the Assistant Engineer, PWD (Roads) Directorate, Ghatal Highway Division was directed to take necessary action to remove the unauthorised encroachment within the time limit as indicated in the order dated 15th December, 2025.
7. The petitioner has approached this Court praying for issuance of a writ in the nature of mandamus commanding the respondents not to take any steps to interfere with the possession of the petitioner in respect of the property in question.

8. Mr. Ghosh, learned Senior Counsel appearing for the petitioner submits that the respondent nos.6 and 7 approached this Court on an earlier occasion with a writ petition by suppressing the material facts that the petitioner is the owner of the disputed structure. He submits that no notice under Section 10(1) of the West Bengal Highways Act, 1964, being Misc. Case no. 26/2025 has not been served upon the petitioner. He further submits that the petitioner has come to know of such order for the first time after a bunch of documents was filed by the learned Additional Government Pleader before this Court on 29th January, 2026. Mr. Ghosh further submits that the property over which the broiler chicken centre was set up was on the raiyati property of the petitioner and no portion of the said land stood vested with the PWD.
9. Mr. Betal, learned Advocate appearing for the private respondent nos. 6 and 7, disputes the submission of Mr. Ghosh. He submits that the impugned structure was in possession of the fifth respondent and he has produced the photographs of chicken entre in support of such contention. He submits that the impugned structure was creating obstruction to the ingress and egress of the respondent nos. 6 and 7 for which, the said respondents approached this Court on an earlier occasion and the authorities, after causing a demarcation of the plot in question, found that the impugned structure was constructed on the vested land, which was managed and controlled by the Public Works Department of the State of West Bengal.
10. Mr. De, learned Additional Government Pleader, submits that pursuant to the direction passed by a coordinate Bench of this Court, a proceeding under Section 10 of the Act, 1964 was initiated and after causing necessary inquiries and demarcation and also after hearing the parties, an order under Section 10(3) of the Act of 1964

was passed. He further, submits that an appeal lies against such order and, therefore, the instant writ petition is not maintainable.

11. Heard the learned Advocates for the parties and perused the materials placed before this Court.
12. Sub-Section (4) of Section 10 of the West Bengal Highways Act, 1964 states that if the person responsible for the encroachment is aggrieved by the order of the Magistrate under Sub-Section (3) of Section 10 of the said Act, he may, within 15 days from the date of 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 impugned in Sub-Section (3).
13. Thus, it is evident that an appeal lies against an order passed under Sub-Section (3) of Section 10 of the 1964 Act.
14. In the case on hand, an order under Section 10(3) of the 1964 Act has been passed by treating the plot in question where the impugned structure has been erected to be vested with the State.
15. From the bunch of documents produced before this Court, it appears that a land acquisition proceeding was initiated and it, prima facie, appears that an award was published in a proceeding under Section 11 of the Act I of 1894.
16. The petitioner, however, disputes that the property in question stood vested to the State. On the other hand, the private respondents and the State uniformly submit that the property over which the structure was constructed falls within the vested land.
17. Since the factual dispute has arisen in this writ petition, this Court is not inclined to entertain this writ petition.

18. Sub-Section (4) of Section 10 of the 1964 Act provides a right of appeal to a person responsible for the encroachments to prefer an appeal under Sub-Section (4) of Section 10 of the said Act against an order passed under Sub-Section (3) of Section 10 of the Act 1964. By the order passed under Section 10(3), it has been held that the fifth respondent has encroached upon the vested land and the petitioner claims that the fifth respondent is a tenant under him. Thus, the petitioner falls within the expression 'person aggrieved' so as to maintain an appeal under Section 10(4) of the 1964 Act.
19. No materials have been produced before this Court to show that the order under Section 10(3) of the 1964 Act has been served upon the petitioner.
20. This Court is, therefore, of the considered view that the period of limitation as provided under Sub-Section (4) of Section 10 of the 1964 Act cannot be said to run from the date of Magistrate's order in the case on hand.
21. For the reasons as aforesaid, WPA 1518 of 2025 stands disposed of with the following observations:
 - i) The petitioner will be at liberty to prefer an appeal under Section 10(4) of the 1964 Act challenging the order dated 15th December, 2025 passed by the Sub-Divisional Magistrate, Ghatal, Paschim Medinipur in Miscellaneous Case No. 26/25 within a period of 15 days from the date of receipt of a server copy of this order;
 - ii) In the event an appeal is presented within the time limit mentioned hereinbefore, the Appellate Authority shall consider the same on merits and shall not dismiss the same on the ground of limitation;

- iii) The appeal, if filed within the time limit mentioned hereinbefore, shall be disposed of as expeditiously as possible, but positively within a period of 30 working days from the date of filing of such appeal, and by passing a reasoned order after giving an opportunity of hearing to the petitioner, the private respondents and any other person who may be affected by such decision and the reasoned order shall be communicated to the parties within a period of seven working days from the date of passing of such order;
 - iv) There shall be an order of stay of operation of the order dated 15th December, 2025 till the order passed by the Appellate Authority under Section 10(4) of the 1964 Act is communicated to the petitioner;
 - v) The parties will be at liberty to raise all points in support of their respective claims before the Appellate Authority and rely upon all documents in support of their respective cases and the Appellate Authority shall be free to pass an order after considering the materials produced by the respective parties;
22. It is, however, made clear that this Court has not gone into the merits of the claim made by the respective parties and the observations made hereinbefore are only for the purpose of supporting the ultimate conclusion in this writ petition.
23. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Hiranmay Bhattacharyya, J.)