

Sl. 22
11.03.2026
Court No.19
BP

WPA 4491 of 2026

Md. Nur Ali
-versus-
The State of West Bengal and others

Mr. Kushal Kumar Chatterjee
Ms. Joyeeta Majumder
..for the petitioner

Mr. Santanu Kumar Mitra, Sr. Govt. Advocate
Ms. Anandamoyee Ghosh
..for the State

Mr. Salauddin Ahamed
Mr. Sandipan Maity
..for the private respondent

The petitioner has challenged the notice dated 30th January, 2026 issued by the Assistant Engineer, Mayurakshi Bridge Highway Sub-Division, Public Works (Roads) Directorate under Section 10(1) of the West Bengal Highways Act, 1964 in this writ petition.

The learned advocate appearing for the petitioner submits that the petitioner is carrying on business from the shop rooms upon payment of taxes to the concerned authority. The learned advocate for the petitioner further submits that the petitioner cannot be dispossessed from the portion of the plot in question occupied by him except by due process of law. He submits that the respondent authorities are trying to evict the petitioner from the plot in question forcibly.

At this stage it will not be out of place to note that pursuant to an order dated 13th March, 2025 passed by a Co-ordinate Bench in WPA 2744 of 2025 a proceeding has been initiated under the West Bengal Highways Act, 1964 and a notice under Section 10(1) of the said Act has already been issued. After going through the said notice this Court finds that the petitioner and the private respondents have been directed to remove their encroachment from the PWD road on or before 17th February, 2026. It is not in dispute that the directions contained in the said notice have not been complied with either by the petitioner or by the private respondents. Sub-section (2) of Section 10 states that if the encroachment is not removed within the time specified in the notice, the Highway Authority of 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.

On a query of the Court as to what further steps have been taken by the Assistant Engineer as it is not in dispute that the encroachment has not yet been removed pursuant to the notice under Section 10(1) of the West Bengal Highways Act, 1964, Mr. Mitra, learned Senior Government Advocate submits that necessary steps in

accordance with law shall be taken within the time limit as may be fixed by this Court.

Sub-section (3) of Section 10 states that 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 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.

The consequences for non-compliance of the notice under Section 10(1) of the West Bengal Highways Act, 1964 have been provided for in Section 10(2) and 10 (3) of the 1964 Act.

In view thereof, this Court directs the Assistant Engineer, Mayurakshi Bridge Highway Sub-Division, Public Works (Roads) Directorate being the 3rd respondent to take steps in accordance with the provisions laid down under Section 10(2) of the 1964 Act as expeditiously as possible but positively within a period of two weeks from the receipt of a server copy of this order. If an application as contemplated under sub-section (2) of Section 10 is made by the Assistant Engineer to the Executive Magistrate, such Magistrate shall decide the issue in accordance with the provisions laid down under sub-section (3) of Section 10 as expeditiously as possible but positively within a period of four weeks from the date of

receipt of the application from the Assistant Engineer, Mayurakshi Bridge Highway Sub-Division, Public Works (Roads) Directorate.

It is, however, made clear that this Court has not gone into the merits of the claims and counter-claims of the respective parties and all points are left open to be decided by the Executive Magistrate at the appropriate stage.

Parties will also be at liberty to produce documents in support of their respective claim before the Executive Magistrate.

With the above observations, WPA 4491 of 2026 stands disposed of.

There shall be however no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)