

Item-
5. 06-03-2026

WPA 4725 of 2026

sg Ct. 19
Santu Dutta
Versus
State of West Bengal & Ors.

Mr. D.N. Chatterjee
Mr. S. G. Saha
...for the petitioner
Mr. Arup Kr. Mondal
Ms. Susmita Chatterjee
...for the State

Affidavit of service filed in Court is taken on record.

The petitioner claims to be the co-sharer in respect of Plot no. 1201, J.L. No. 113, L.R. Khatian No. 1966, within Mouza Gazipur, under Police Station Katwa, in the District of Purba Bardhaman. The petitioner states that the predecessor-in-interest of the petitioner constructed a residential structure on the said plot of land. The notice under Section 10(1) of the West Bengal Highways Act, 1964 was served upon the petitioner directing him to remove the encroachment from the PWD road. Since the petitioner did not remove the encroachment within the time limit indicated in the said notice, the matter was subsequently referred to the Sub-Divisional Magistrate and the said respondent passed an order dated 24th January, 2025 under Section 10(3) of the 1964 Act. The petitioner has challenged the action of the respondent authorities in directing the demolition of the structure in question.

Mr. Chatterjee, learned Advocate for the petitioner submits that the property is situated on the raiyati plot being plot no. 1209 and no portion of PWD road has been

encroached.

The learned Advocate appearing for the State raises an objection as to the maintainability of this writ petition. He submits that the order impugned dated 24th January, 2026 passed by the Sub-Divisional Magistrate under Section 10(3) of the 1964 Act is an appealable order.

It is not in dispute that the order dated 24th January, 2026 was passed by the Sub-Divisional Magistrate, Katwa Sub-Division in exercise of power conferred under Section 10(3) of the 1964 Act and such order is an appealable order under the provisions of sub-Section (4) of Section 10 of the 1964 Act. In view thereof, this Court is not inclined to entertain this writ petition.

Faced with such situation, Mr. Chatterjee, learned Advocate appearing for the petitioner, on instruction, prays for leave to withdraw this writ petition with liberty to approach the appropriate forum in accordance with law.

Mr. Chatterjee submits that through inadvertence, the instant writ petition was filed and he undertakes that the petitioner shall approach the appropriate forum within a period of 15 days from the date of receipt of a server copy of this order.

Though the order dated 24th January, 2026 records that such order was passed in exercise of power conferred under Section 10(3) read with Section 10(4) of the 1964 Act but after going through the said order, this Court finds that the Sub-Divisional Magistrate is not vested with the power to function as an appellate authority under Section 10(4) of the

1964 Act. Thus, the order dated 24th January, 2026 shall be construed to be an order passed in exercise of powers under Section 10(3) of the 1964 Act.

In the light of the submissions made by the learned Advocates for the respective parties, WPA 4725 of 2026 stands dismissed as withdrawn with liberty to the petitioner to approach before the appropriate forum in accordance with law. In the event the petitioner approaches the appropriate forum within 15 days from the date of receipt of a server copy of this order, the appellate authority shall consider the appeal and dispose of the same on merits and in accordance with law without dismissing the same on the ground of limitation.

(Hiranmay Bhattacharyya, J.)