

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

BEFORE:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 6767 of 2026

**Subal Halder @ Subal Chandra Halder & Anr.
Versus
The State of West Bengal & Ors.**

Appearance:
Mr. Chandra Nath Sarkar
Mr. Sounak Mandal
... for the petitioners

Mr. Jaharlal De, Ld. AGP
Ms. Sukla Das Chandra
... for the State

Heard on: 23.03.2026

Judgement delivered

In open Court on: 23rd March, 2026.

The Court:-

1. The affidavit of service filed in Court is taken on record.
2. The petitioners claim to have challenged an order passed under Section 10(3) of the West Bengal Highways Act, 1964 dated 12th November, 2025 by preferring an appeal under Section 10(4) of 1964 Act on March 9, 2026.
3. Mr. Sarkar, learned Advocate appearing for the petitioners submits that, the petitioners have approached the appellate authority under the 1964 Act challenging the order passed under Section 10(3) of the

said Act and no date for hearing of the said appeal has been fixed as of yet by the appellate authority. He submits that unless an order of injunction restraining the respondent authorities from giving any effect to the notice dated November 12, 2025, is passed, the appeal would become infructuous.

4. Mr. De, learned Additional Government Pleader raises an objection as to the maintainability of this writ petition on the ground that the objector i.e. person at whose instance the proceeding under Section 10 of the West Bengal Highways Act, 1964 was initiated by the respondent authority, is a necessary party in the appeal filed under Section 10(4) of the 1964 Act as well as in this writ petition. He submits that the instant writ petition is liable to be dismissed on the ground of non-joinder of necessary party. In support of his contention that the objector/complainant was heard at all stages of the proceeding prior to the filing of the appeal by the petitioner herein, Mr. De draws the attention of this Court to the order passed by the coordinate Bench in an earlier round of litigation as well as orders passed by the authorities under the 1964 Act.
5. In reply, Mr. Sarkar, learned Advocate for the petitioners, places reliance upon the provisions laid down under Sub-Sections (1), (2), (3) and (4) of Section 10 of the West Bengal Highways Act and submits that such provisions do not contemplate participation of the objector/complainant at any stage of the proceeding under Section 10 of the 1964 Act.

6. Heard the learned Advocates for the respective parties and perused the materials placed.
7. Since an objection has been raised as to the maintainability of the appeal preferred by the petitioners under Section 10(4) of the 1964 Act as well as this writ petition, this Court feels that such objection should be considered first before proceeding further to decide as to whether the petitioners are entitled to any relief(s) in this writ petition.
8. For the purpose of effective adjudication of the aforesaid objection raised by Mr. De, learned Additional Government Pleader, it would be beneficial to recapitulate the provisions laid down under Section 10 of the 1964 Act for which the same are extracted hereinafter:

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 Magistrate made under sub-section (3) he may, within fifteen dates 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). *(emphasis supplied)*

9. Section 10 deals with removal of an 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 a highway under sub-section (1) of section 3, 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.
10. Thus, the provision laid down under section 10(1) requires a notice to be served upon the person who is found to have made an encroachment requiring him to remove the encroachment and restore the highway to its original condition.

11. Sub-section (2) of section 10 contemplates an application to be made by the Highway Authority or by any officer authorised under sub-section (1) to the Executive Magistrate having jurisdiction over the area for removal of encroachment and delivery of possession of the land encroached upon to the Highway Authority or such officer, if the encroachment is not removed within the time specified in the notice under Section 10(1).
12. Sub-section (3) of Section 10 casts an obligation upon the Executive Magistrate to make an order authorising the authority or officer to recover possession and remove the encroachment in question after notice to the person responsible for the encroachment and on taking such evidence, may direct the police to assist in the enforcement of the order. Thus, Sub-section (3) contemplates an adjudication upon taking evidence as may be necessary and making an order.
13. Sub-section (4) of Section 10 provides a remedy of appeal only to the person responsible for encroachment, if he is aggrieved by the order of the Magistrate under Section 10(3). Subsection (4) also provides the period of limitation for preferring such appeal. It also provides that the District Magistrate shall after hearing the parties make an order affirming, modifying or setting aside the order made under sub-section (3) of Section 10.
14. Thus, the appellate authority is empowered to affirm, modify or set aside an order passed under Section 10 (3) after hearing the parties. In other words, the appellate authority can modify, set aside and

affirm an order directing removal of encroachment in an appeal preferred by the person responsible for encroachment if such person is aggrieved by the order passed under Section 10(3).

15. In the case on hand, previously a writ petition was filed by one Susanta Halder, being WPA 6859 of 2024 alleging that the petitioners herein have encroached upon the PWD land and have made unauthorised construction. A Representation dated February 16, 2024 was submitted by the said Susanta Halder before the respondent authorities. Alleging inaction on the part of the respondent authorities, said Susanta Halder approached this Court by filing WPA 6859 of 2024 and the coordinate Bench passed an order dated 17th March, 2025 directing the jurisdictional Block Land and Land Reforms Officer to cause a physical inspection of the alleged encroachment and construction upon prior notice to the petitioners therein, private respondents therein i.e., the petitioners herein and submit the report before the petitioners, private respondents and the jurisdictional Assistant Engineer, PWD.
16. The coordinate Bench further observed that in the event the report confirms the alleged encroachment and construction on the PWD land then the jurisdictional Assistant Engineer, PWD, after issuing a prior hearing notice of at least seven days to the petitioner and the private respondents and after giving them an opportunity of hearing, shall decide the said representation dated February 16, 2024 by passing a reasoned order.

17. Pursuant to the directions passed by the co-ordinate bench on 17.03.2025 in WPA 6859 of 2024, a reasoned order dated 02.09.2025 was passed by the Jurisdictional Assistant Engineer. Before such authority the petitioners herein who were respondent nos. 6 & 7 in the earlier writ petition verbally stated that they have carried out constructions in front of plot no. 8214 and also stated that the structure does not create any barrier of the ingress and egress of Susanta Halder. Petitioner herein also admitted that his construction stands on PWD Land.
18. The jurisdictional Assistant Engineer, after considering the demarcation report of the Block Land & Land Reforms Officer and after hearing the petitioner in WPA 6859 of 2024 and the private respondents therein, and after noticing the admission of the petitioner about encroachment of PWD Land passed an order holding that the private respondents therein i.e. petitioners herein occupied the government land in question in front of the petitioner's (Susanta Halder's) riayati plot in an unauthorised manner.
19. By the order dated 2nd September, 2025, direction was passed by the Assistant Engineer to remove the unauthorised construction from the government land under the purview of the West Bengal Highways Act, 1964.
20. It appears from the Memo dated 5th August, 2025 issued by the concerned BL & LRO that the copy of the physical inspection report was forwarded to Susanta Halder. Record reveals that the petitioner

submitted a representation dated 08.09.2025 before the concerned BL & LRO requesting him to direct the Revenue Inspector to undertake a fresh demarcation. From the said letter, it is evident that the petitioner was present at the time of demarcation made by the Revenue Inspector. Since the encroachment was not removed within the time limit as indicated in the aforesaid Memo, the matter was forwarded to the Sub-Divisional Magistrate, Baruipur, South 24 Parganas.

21. It further appears from the record that after receiving the copy of the order passed by the Assistant Engineer, the Sub-Divisional Magistrate served notice upon Susanta Halder and the petitioner herein.
22. The Sub-Divisional Magistrate passed an order dated 12th November, 2025 directing the concerned Assistant Engineer to take necessary steps to remove the illegal encroachment on the PWD road in the interest of the public and complete the demolition process within the time limit indicated therein.
23. After going through the order dated 12th November, 2025, this Court finds that the petitioners herein and the Susanta Halder were heard by the Sub-Divisional Magistrate prior to passing the order dated 12th November, 2025.
24. From the sequence of events recorded hereinbefore, it is evident that the proceeding for removal of encroachment was initiated on the complaint of the private party i.e. Susanta Halder and pursuant to an

order passed by a co-ordinate bench. The said Susanta Halder participated in the said proceeding at all stages till the order was passed under Section 10(3) of the 1964 Act. A copy of the appeal petition filed by the petitioners herein under Section 10(4) of the 1964 Act has been annexed to this writ petition. It appears therefrom that the said Susanta Halder has not been impleaded as a party respondent in this writ petition.

25. The question that falls for consideration is whether the said Susanta Halder is a necessary party in an appeal under section 10(4) of the 1964 Act.
26. Sub-Section (4) of Section 10 uses the expression “after hearing the parties”.
27. A proceeding under section 10 may have been initiated suo motu by the authorities if any person is found to have made an encroachment. In such a case, there may not be any private complainant alleging an unauthorised encroachment and praying for removal of encroachment. However, from the facts recorded hereinbefore, it is not in dispute that the proceeding for removal of encroachment, in the instant case, was initiated on the basis of complaint of a private individual namely, Susanta Halder.
28. The petitioners have assailed an order passed under Section 10(3) of the 1964 Act, which was passed after affording an opportunity of hearing to the petitioners as well as one Susanta Halder.

29. Section 10(4) states that the District Magistrate shall, after hearing the parties, make an order affirming, modifying or setting aside the order made under sub-section (3). The expression “shall” used in Section 10(4) implies that affording an opportunity of hearing to the parties is a mandatory requirement for passing an order. The word “parties” would undoubtedly include within its fold a complainant/objector at whose instance a proceeding under Section 10 has been initiated.
30. In the case on hand the order under Section 10(3) has been passed in favour of the complainant/objector namely Susanta Halder. Thus, the effect of the order passed under Section 10(3) is that the prayer of Susanta Halder for removal of encroachment upon the PWD road in front of his property was allowed.
31. That apart when a person responsible approaches the appellate authority for setting aside or modification of the order under Section 10(3), the principles of natural justice demands that, the person in whose favour such an order has been passed, shall also be afforded an opportunity of hearing before the appellate authority in order to enable such person to defend the order passed under Section 10(3) as the appellate authority apart from exercising the power to set aside or modify the order under appeal also has been vested with the power to affirm such order.
32. This Court accordingly holds that Susanta Halder, at whose instance the proceeding under Section 10 was initiated and who participated

in the proceeding at all stages till an order under Section 10(3) was passed, is a necessary party in the appeal filed by the petitioner under Section 10(4) of the 1964 Act.

33. As observed hereinbefore, that the said Susanta Halder who participated in the entire proceeding till the section 10(3) stage has not been impleaded as a party in the appeal under Section 10(4) of the 1964 Act. The petitioners have approached this Court praying for setting aside the order dated 12th November, 2025 passed under Section 10(3) of the 1964 Act. At this stage, Mr. Sarkar, learned Advocate for the petitioners submits that he is not pressing the prayer made in paragraph (c) of the writ petition. Prayer (c) of the writ petition is set out hereinafter:

“(c) A writ in the nature of Mandamus commanding the respondent authorities to set aside, cancel and/or quash the order dated 12.11.2025 passed by the respondent no.3 herein”

34. In the light of the submission made by Mr. Sarkar, learned Advocate appearing for the petitioners, the relief claimed under prayer (c) of the writ petition stands dismissed as “not pressed”.
35. At this stage, Mr. Sarkar, learned Advocate for the petitioners submits that a direction be passed upon the District Magistrate to dispose of the appeal filed under Section 10(4) as expeditiously as possible and to grant an interim protection till the appeal is finally heard out.

36. This Court has already observed that the said Susanta Halder is a necessary party in the appeal filed under Section 10(4).
37. Petitioner prayed for an interim order of stay of operation of the order dated 12.11.2025 passed under Section 10(3). An order of stay of operation of the order impugned in the appeal filed under Section 10(4) would adversely affect the right of Susanta Halder whose prayer for removal of encroachment was allowed by the order dated 12.11.2025.
38. Susanta Halder has also not been impleaded as a party respondent in this writ petition. It appears to this Court that the petitioner is attempting to obtain an interim order behind the back of Susanta Halder keeping him in dark about the subsequent proceedings initiated by the petitioner.
39. Mr. Sarkar would contend that a writ petition cannot be dismissed for misjoinder and non-joinder of parties and in support of such contention, he referred to the provisions of Order 1 Rule 9 of the Code of Civil Procedure.
40. Proviso to Order 1 Rule 9 of the Code of Civil Procedure, however, states that nothing in Order 1 Rule 9 shall apply to non-joinder of a necessary party and this Court has already observed that Susanta Halder is a necessary party. It logically follows that for non-joinder of a necessary party, a proceeding is liable to be dismissed.

41. For all the reasons as aforesaid, this Court is not inclined to grant any relief to the petitioner in this writ petition for non-joinder of Susanta Halder as a party respondent in this writ petition.
42. In view thereof, the writ petition stands dismissed. However, there shall be no order as to costs.
43. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.
44. However, this order shall not preclude the petitioner from taking appropriate steps before the appellate authority in accordance with law.

(Hiranmay Bhattacharyya, J.)

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