

Item-
11. 24-06-2026

WPA 13667 of 2026

sg Ct. 19 Sk. Asadullah Masud
Versus
The State of West Bengal & Ors.

Mr. Sabir Ahmed
Mr. Dhiman Banerjee
...for the petitioner
Mr. Nilanjan Bhattacharjee, SSC
Ms. Jayita Dhar Chakraborty
Mr. Rhitam Chatterjee
...for the State

Affidavit of service filed in Court is taken on record.

The learned Advocate appearing for the petitioner, in his usual fairness, submits that in the forwarding letter, the date of appearance of this writ petition in the list was mentioned as 30th June, 2026.

However, the State is represented by Mr. Bhattacharjee, learned Senior Standing Counsel. He submits that he has received instruction in respect of this matter and has no objection if the matter is taken up today.

The petitioner is aggrieved by issuance of a notice under Section 10(1) of the West Bengal Highways Act, 1964.

The learned Advocate appearing for the petitioner, in his usual fairness, submits that the demarcation exercise was conducted in his presence but the same was not done in a proper manner.

Mr. Bhattacharjee submits that the petitioner has approached prematurely. He submits that it will be open to the petitioner to raise all points at the appropriate stage before the concerned Sub-Divisional Magistrate.

Section 10(2) of the West Bengal Highways Act,

1964 states that, if the encroachment is not removed within the time specified, the Highway Authority or authorized officer can make an application directly to an Executive Magistrate, having jurisdiction over the area, but 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.

Mr. Bhattacharjee is right in his submission.

The petitioner has approached at premature stage. In the event the matter is referred to before the Magistrate under Section 10(3) of the 1964 Act, such Magistrate is obliged to serve a notice to the persons responsible for 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.

In the event the encroachment is not removed within the time limit as indicated in the notice under Section 10(1) of the 1964 Act and the matter is thereafter referred to the Magistrate under Section 10(2) of the 1964 Act, the petitioner will be at liberty to raise all points before such authority as Section 10(3) of the 1964 Act contemplates an adjudication to be made.

With the above observations and directions, the writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Hiranmay Bhattacharyya, J.)