

Item-
A-172.

24-06-2026

sg

Ct. 19

**WPA 22337 of 2025
CAN 1 of 2025**

Tapan Kumar Mondal
Versus
The State of West Bengal & Ors.

Mr. Anjan Bhattacharya
Mr. Anita Shaw
Ms. Seema Thakur

...for the petitioner

Mr. Nilanjan Bhattacharjee, SSC
Ms. Jayita Dhar Chakraborty
Mr. Rhitam Chatterjee

...for the State

Mr. Debabrata Acharyya
Mr. Sital Samanta

...for the applicant (Addition of party)

In Re: CAN 1 of 2026

This application is at the instance of Sulekha Mondal. She claims that she is recorded owner of plot no. 1193. She further claims that she has filed a title suit being no. 224 of 2025 before the learned civil Judge (Senior Division), Diamond Harbour, South 24 Parganas for partition and for other consequential reliefs. She submits that she is a necessary party in this writ petition and prays for being added as a party respondent in this writ petition.

Heard Mr. Anjan Bhattacharya, learned Advocate appearing for the writ petitioner.

After going through the averments made in CAN 1 of 2025 and after considering the scope of the writ petition, this Court is of the considered view that the applicant in CAN 1 of 2026 is a necessary party in this writ petition. Accordingly, the application in CAN 1 of 2026 is added as a party respondent in this writ petition.

The department is directed to carry out necessary amendments in the cause title of the writ petition.

CAN 1 of 2026 is thus allowed.

In Re: WPA 22337 of 2025

In this writ petition the petitioner has prayed for a direction upon the respondent authorities to take steps for removal of the encroachment upon the Nayanjuli.

The petitioner claims to be the recorded owner in respect of Dag No. 1193, J.L. No. 111, within mouza Purga Durgapur, under Police Station Falta. The petitioner states that there is a Nayanjuli which is adjacent to the aforesaid property of the petitioner and some unknown persons have raised a construction by encroaching the said Nayanjuli. The petitioner submitted a representation before the Assistant Engineer, Public Works Department, Diamond Harbour, which was forwarded through registered post on 13th August, 2025.

Mr. Bhattacharya, learned Advocate for the petitioner submits that in spite of receipt of such representation, no effective steps have been taken by the Assistant Engineer apart from issuing a notice under Section 10(1) of the West Bengal Highways Act, 1964.

The learned Advocate appearing for the private respondent submits that a suit for partition being Title Suit 224 of 2025 has been filed by the added respondent praying for partition and other consequential reliefs and the said suit is pending before the learned Civil Judge (Senior Division), Diamond Harbour. He submits that the writ petitioner herein has been impleaded as a first defendant in the said suit. He submits that the dispute involved between the petitioner and the private respondent is civil in nature and for which no relief should be granted in favour of the petitioner in this writ

petition.

Mr. Bhattacharjee, learned Senior Standing Counsel submits that necessary steps in accordance with law shall be taken if any encroachment upon the land of the Public Works Department is found.

After going through the plaint of Title Suit no. 224 of 2025, this Court finds that Dag no. 1193 is the subject matter of the suit for partition. It appears from the copy of the order dated 21st April, 2025 passed by the learned Civil Judge that an ad hoc order of injunction in the form of status quo with regard to nature, character and possession of the suit property has been passed for a specified period.

The learned Advocate appearing for the added respondent submits that the said ad hoc order of injunction has been extended from time to time and the same is still subsisting.

In course of hearing of this writ petition, Mr. Bhattacharya, learned Advocate for the petitioner produces a copy of the notice dated 7th January, 2025 issued by the Assistant Engineer, PWD, Diamond Harbour Sub-Division under Section 10(1) of the 1964 Act.

After going through the said notice, this Court finds that the notice under 10(1) of the 17964 Act has been issued directing both the writ petitioner and the added respondent herein to remove their encroachment from the land which is mentioned in the schedule of the said notice. From the land schedule mentioned in the said notice, this Court finds that the LR/RS plot no. 1200 is within Mouza Purba Durgapur Purba Durgapur itself and the subject matter of the title suit and this writ petition is completely different. For such reason,

this Court is inclined to entertain this writ petition.

Since a notice under Section 10(1) of the 1964 Act has been issued, the parties are obliged to take the proceeding to its logical end. It further appears from the said notice that the encroachers i.e. the writ petitioner and the added respondent were directed to remove the encroachment on or before 22nd January, 2025. None of the aforesaid encroachers have complied with the directions contained in the said notice.

Section 10(2) of the West Bengal Act, 1964 states that if the encroachment is not removed within the time specified in the notice, the Highway Authority or the officer authorised 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.

Section 10(3) of the 1964 Act 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 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.

It appears that the Assistant Engineer has not taken any further steps after issuance of the notice under Section 10(1) of the 1964 Act.

For such reason, this Court directs the Assistant Engineer, Public Works Department, Diamond Harbour Sub-Division, being the fifth respondent to take appropriate steps

under Section 10(2) of the 1964 Act if the encroachment has not been removed till date, as early as possible but positively within a period of two weeks from the receipt of a server copy of this order.

Immediately upon receipt of the application from the Assistant Engineer, the concerned Executive Magistrate shall takes steps in accordance with the provisions of Section 10(3) of the 1964 Act and take such proceeding to its logical end as expeditiously as positively but positively within a period of eight weeks from the date of receipt of the application from the concerned Assistant Engineer.

With the above observations and directions, this writ petition stands disposed of. However, there shall be no order as to cost.

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

(Hiranmay Bhattacharyya, J.)