

Ct.No.1 D/L 04.02.2026
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Saikat
Mukherjee

WPA(P)/519/2025

**GOPAL MAJUMDER
VS.
THE STATE OF WEST BENGAL AND ORS.**

Mr. Dyutiman Banerjee, Adv.
Mr. Debjit Dutta, Adv.

...For the Petitioner

Mr. Deepnath Roy Chowdhury, Adv.

...For the State

Ms. Manika Roy, Adv.
Mr. Atanu Sur, Adv.

...For the Respondent No.6/NHAI

Per, Partha Sarathi Sen, J.

- 1.** Affidavit-of-service, as filed on behalf of the writ petitioner, is taken on record.
- 2.** The parties to the instant writ petition are represented by their respective learned counsels.
- 3.** By filing the instant writ petition, the writ petitioner has prayed for issuance of appropriate Writ/Writs against the respondent authorities, more specifically against the Respondent No.2 authority to take appropriate steps for demolition of the illegal construction allegedly made by the private respondent beside the primary school located and situated at District-Nodia, Mouza-Nakashipara, JL No.49, Plot No.453/1561.

- 4.** At the time of hearing, Mr. Banerjee, learned advocate, appearing on behalf of the writ petitioner, at the very outset, draws attention of ours to Page Nos.12 and 13 of the instant writ petition being a copy of the representation, as has been submitted with the Respondent No.2 authority, alleging encroachment at the instance of the private respondent over the National Highway causing thereby serious encumbrance not only to the public of the locality but also to the students of the nearby school. It is submitted by Mr. Banerjee that despite submission of the representation, nothing has been done which prompted the writ petitioner to file the instant writ petition by way of public interest litigation.
- 5.** In course of hearing, Ms. Roy, learned advocate appearing on behalf of the National Highway authority draws our attention to section 26 of the Control of National Highways (Land and Traffic) Act, 2002 (hereinafter referred to as 'the said Act', in short). During the course of hearing, Ms. Roy also handed over a copy of the notification No. S.O. 4938(E) dated 29th October, 2025. It is submitted by Ms. Roy that pursuant to the said notification, the jurisdictional District Magistrate is the competent authority to remove unauthorised occupant from the National Highway in view of the provision of section 26 of the said Act.

- 6.** Learned advocate for the Respondent-State contended that justice would be subserved if the Respondent No.2 authority is directed to consider the representation of the writ petitioner, as received on 13th November, 2025, in accordance with law. It is, however, submitted on behalf of the State that instead of filing a writ petition in the nature of public interest litigation, the writ petitioner is supposed to file a regular writ petition before the appropriate Bench having determination.
- 7.** On careful perusal of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, we propose to decide the point of maintainability of the instant writ petition since at the time of hearing, learned advocate for the Respondent-State submits before this Court that the instant writ petition in the nature of public interest litigation is not maintainable.
- 8.** We have meticulously perused the pleadings as made in the instant writ petition. It reveals that it is the specific case of the writ petitioner that adjacent to the relevant Plot No. 453/1561 there is a primary school, namely, Bethuadahari Rajendranagar GSF Primary School. It is the further assertion of the writ petitioner that on account of illegal encroachment on the National Highway at the instance of the private respondent, the children are facing problem to approach to the said school and on account of such

encroachment, the entire adjoining area has become polluted.

9. It, thus, appears to us that the writ petitioner has approached before this Court not for his personal cause but for the cause of the society.
10. With the aforementioned observation, we consider that the instant writ petition, which is in the nature of a public interest, is very much maintainable.
11. On careful perusal of the copy of the representation, as has been submitted on 13th November, 2025, with the Respondent No.13 *vis-à-vis* the provision of section 26(2) of the said Act and the latest notification dated 29th October, 2025, we find that it is the respondent No.2 authority who is responsible for removal of unauthorised occupation either as a result of periodical inspection of the Highway land or otherwise.
12. It appears to us that by way of representation dated 13th November, 2025, the writ petitioner has brought to the notice of the Respondent No.2 with regard to the alleged encroachment on the National Highway and, therefore, the Respondent No.2 authority, being the appropriate authority within the meaning of section 26(2) of the said Act, is duty-bound to discharge its statutory obligation either by way of periodical inspection or otherwise to remove the encroachment, if there be.

- 13.** In view of such, we, while disposing the instant writ petition, direct the Respondent No.2 authority to consider the representation dated 13th November, 2025, in accordance with law and after giving due opportunity of hearing, both to the writ petitioner and the Private Respondent No.8 and/or their authorised representatives and/or any other stakeholders, if there be any, shall pass a reasoned order and shall forthwith communicate the same to all the parties to the said hearing.
- 14.** The entire exercise, as indicated in the foregoing paragraph, is to be completed within 60 working days from the date of communication of the server copy of this order.
- 15.** The time limit, as fixed by this court, is peremptory and mandatory.
- 16.** Liberty is given to the learned advocate-on-record to communicate the server copy of this order to the Respondent No.2 authority. The Respondent No.2 authority is directed to act on the basis of the server copy of this order.
- 17.** It is further ordered that in the event while passing the reasoned order, the Respondent No.2 finds sufficient merit in the representation of the writ petition, he is directed to take all consequential action soon thereafter.
- 18.** With the aforementioned observations and directions, WPA (P) No.519 of 2025 is **disposed of**.

- 19.** Before parting with, it is, however, made clear that while disposing the instant writ petition we have not gone into the merit of the representation dated 13th November, 2025, and thus, all points are kept open for adjudication before the Respondent No.2 authority.
- 20.** Since affidavits have not been called for, the allegations made in the instant writ petition are deemed to have been denied.
- 21.** Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

(SUJOY PAUL, C.J.)

(PARTHA SARATHI SEN, J.)