

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

**BEFORE:
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA**

WPA 28873 OF 2025

**Pranab Maity & Ors.
VS.**

The State of West Bengal & Ors.

For the Petitioners	: Mr. Ashim Kumar Routh Mr. Subhayan Barik Ms. Manishka Dhar advocates
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For the State	: Mr. Chandi Charan De, AGP Ms. Saswati Chatterjee
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For the respondent nos. 10 & 11	: Ms. Aparajita Mitra	 advocates advocate
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Reserved on	: 04.02.2026
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Judgment on	: 21.04.2026
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Hiranmay Bhattacharyya, J.:-

1. Petitioner has challenged the notice dated November 17, 2025 issued by the Sub-Divisional Officer, Kakdwip, District 24 Parganas (S) being the 7th respondent directing the parties to attend the hearing under Section 10(3) of the West Bengal Highways Act, 1964.
2. The Assistant Engineer, Kakdwip Highway Sub-division, being the 6th respondent issued a notice dated 12.03.2024 under Section 10(1) of the West Bengal Highways Act, 1964 (for short “the 1964 Act”) directing the petitioner to remove the encroachment upon Gangasagar to Kachubaria main Road in LR Dag No. 1778, within Mouza Harinbari, JL No. 031, under Police Station Sagar, in the District of 24 Parganas (South). Thereafter, the

6th respondent issued a letter under Section 10(2) of the 1964 Act to the 7th respondent. Pursuant to the letter issued under 10(2) of the 1964 Act, the 7th respondent issued a notice dated July 25, 2024 fixing a date of hearing under Section 10(3) of the 1964 Act.

3. Petitioner challenged the aforesaid notices dated 12.03.2024 and 25.07.2024 by filing a writ petition being WPA 20204 of 2024. During the pendency of the said writ petition, an order dated 06.08.2024 was passed by the 7th respondent under Section 10(3) of the 1964 Act directing the 6th respondent to recover possession and to remove the encroachment from the PWD Road. Being aggrieved by the order dated 06.08.2024 passed by the 7th respondent, petitioner preferred an appeal under Section 10(4) of the 1964 Act being appeal no. 10 of 2024-25. The appeal no. 10 of 2024-25 was, however, disposed of by the District Magistrate 24 Parganas (S) being the 2nd respondent by an order dated 22.04.2025 by affirming the order dated 06.08.2024 passed by the 7th respondent with a direction upon the 6th respondent to remove the encroachment.
4. Thereafter, WPA No. 20204 of 2024 was dismissed by an order dated 05.05.2025 upon holding that there is no cogent reason to interfere with the notices dated 12.03.2024 and 25.07.2024. By the said order the petitioner and the private respondents therein were directed to appear before the 7th respondent on May 15, 2025 and also on subsequent dates and time as would be fixed by the respondent no. 7 for participating in the proceeding under Section 10(3) of the 1964 Act. By the said order it was clarified that till the passing of the final order under Section 10(3) of the 1964 Act by the 7th respondent, there shall be an order of status quo upon the plot in question.
5. Challenging the order dated 22.04.2025 passed by the 2nd respondent under Section 10(4) of the 1964 Act, petitioner filed a writ petition being WPA 18229 of 2025. A co-ordinate bench, by an order dated 28.08.2025, allowed the writ petition by setting aside the order dated 22.04.2025. Thereafter, a notice dated 17.11.2025 was issued by the 7th respondent requesting the

petitioner and the private respondents to attend the hearing under Section 10(3) of the 1964 Act on 16.12.2025.

6. Challenging the said notice dated 17.11.2025 issued by the 7th respondent, petitioner has approached this Court.
7. Mr. Routh, learned advocate appearing for the petitioner submitted that the land in question from which alleged encroachment has been directed to be removed is a Raiyati land of the petitioners. He, thus, contended that a proceeding under Section 10 of the 1964 Act could not have been invoked for removal of structures standing on a raiyati land. Mr. Routh further contended that pursuant to an order dated 05.05.2025, date(s) of hearing in connection with the proceeding under Section 10(3) of the 1964 Act was /were fixed and the petitioner duly attended the said hearing. He contended that the hearing in connection with the proceeding under Section 10(3) of the 1964 Act had been concluded and thus there was no scope for issuance of further notices under Section 10(2) of the 1964 Act and a hearing notice under Section 10(3) of the 1964 Act dated 17.11. 2025.
8. Mr. Dey learned Additional Government Pleader seriously disputed the submission of Mr. Routh. He contended that pursuant to the order passed by a co-ordinate bench, date of hearing in connection with the proceeding under Section 10(3) of the 1964 Act was fixed. He contended that in order to afford an opportunity of hearing to the respective parties, the notice dated 17.11.2025 was issued by the 7th respondent.
9. The learned advocate appearing for the private respondent submitted that since the petitioner made construction by encroaching upon the PWD Road, a proceeding under Section 10 of the West Bengal Highways Act, 1964 was initiated and pursuant to an order dated 05.05.2025 passed by a co-ordinate bench in WPA 20204 of 2024, the hearing notice dated 17.11.2025 was issued by the 7th respondent.
10. Heard the learned advocates for the parties and perused the materials placed.

11. A notice under Section 10(1) of the 1964 dated 12.03.2024 was issued requesting the noticees to remove the encroachment on Public Works (Roads) acquired land of Kachubaria-Gangasagar Road in a portion of CS Plot no. 1778, Mouza Harinbari, JL 031 under Police Station Sagar in the District of 24 Parganas (South) and to restore the highways to its original condition within the time limit indicated in the said notice. Since the encroachment was not removed in compliance with the direction contained in the 10(1) notice, the 6th respondent made an application to the 7th respondent for removal of the encroachment and delivery of possession of the land encroached upon to the highway authority. Upon receipt of such application from 6th respondent, the 7th respondent issued a notice dated July 25, 2024 fixing a date of hearing under Section 10(3) of the 1964 Act on 06.08.2024 requesting the petitioner and the private respondents to appear at the said hearing.
12. Challenging the aforesaid notices dated 12.03.2024 and 25.07.2024, petitioner filed a writ petition being WPA 20204 of 2024. During the pendency of the said writ petition the 7th respondent passed an order dated 06.08.2024 in exercise of powers vested upon such respondent under Section 10(3) of the 1964 Act authorising the 6th respondent to recover possession and to remove the encroachment from the land in question.
13. When WPA No. 20204 of 2024 came up for hearing on 12.09.2024 a submission was made before the co-ordinate bench by the learned advocate for the petitioner that though the petitioners approached the District Magistrate to file an appeal against the order dated 06.08.2024 the said appeal has not been received by the District Magistrate. On the basis of such submission the co-ordinate bench passed an order of stay of operation of the order dated August 6, 2024 for a limited period. The said interim order was extended from time to time till April 30, 2025.
14. In the meantime, petitioner preferred an appeal under Section 10(4) of the 1964 Act before the District Magistrate 24 Parganas (South) which was registered as Appeal no. 10 of 2024-25. The said appeal was disposed of by

an order dated 22.04.2025 thereby affirming the order dated 06.08.2024 passed by the 7th respondent with a direction upon the 6th respondent to remove the encroachment.

15. WPA No. 20204 of 2024 came up for hearing on 05.05.2025 before a co-ordinate bench. The co-ordinate bench after noting that the subject matter of the writ petition are the notices dated 12.03.2024 and 25.07.2024 issued by the respondent no. 6 and 7 respectively dismissed the writ petition by an order dated 05.05.2025 upon observing that in the absence of any material to come to a finding that the aforesaid two notices are either illegal and /or illogical and also in view of the fact that the writ petitioners have miserably failed to prove at least prima facie that the plot of land in question is a raiyati land, the Court found no cogent reason to interfere with the aforementioned two notices dated 12.03.2024 and 25.07.2024. The co-ordinate bench, however, directed the petitioner and the private respondents to appear before the 7th respondent positively on May 15, 2025 and also on subsequent dates and time as would be fixed by the 7th respondent for participating in the proceeding under Section 10(3) of the 1964 Act. The co-ordinate bench, however, made it clear that till the passing of the final order under Section 10(3) of the 1964 Act by the 7th respondent there shall be an order of status quo upon the plot in question.
16. The petitioner alleged that the order dated 22.04.2025 passed by the District Magistrate under Section 10(4) of the 1964 Act was communicated to the petitioner by a letter dated 15.07.2025. The petitioner thereafter challenged the order dated 22.04.2025 passed by the 2nd respondent by filing a writ petition being WPA 18229 of 2025 which stood allowed by an order dated 28.08.2025 passed by a co-ordinate bench. While passing the order dated 28.08.2025 the co-ordinate bench recorded the submissions of the respective parties that the hearing in connection with the proceeding under Section 10(3) of the 1964 Act before the 7th respondent authority had been concluded but no order has been passed. The co-ordinate bench, by the order dated 28.08.2025, was pleased to set aside the order dated 22.04.2025 and all consequent actions taken by the authorities including

the 6th respondent pursuant to the order dated 22.04.2025 were also set aside.

17. Record reveals that the co-ordinate bench while disposing of WPA 20204 of 2024 permitted the writ petitioner and the private respondents to participate in the proceeding under Section 10(3) of the 1964 Act before the 7th respondent on a specified date i.e., on 15th May 2025. It is not in dispute that pursuant to the order dated 05.05.2025 several dates for hearing were fixed and the parties have uniformly submitted before the co-ordinate bench in course of hearing of the writ petition being WPA 18229 of 2025 on 28.08.2025 that the hearing in connection with the provisions of Section 10(3) of the 1964 Act has already been concluded but no order has been passed.
18. More than 6 months have elapsed since the date of hearing before the 7th respondent in connection with the proceeding under Section 10(3) of the 1964 Act but no decision appears to have been taken by the 7th respondent.
19. After going through the notice dated 17.11.2025 issued by the 7th respondent it appears to this Court that a date for hearing under Section 10(3) of the 1964 Act was fixed. It is not in dispute that while the 7th respondent was in seisin over the proceeding under Section 10(3) of the 1964 Act, a writ petition being WPA 18229 of 2025 was filed by the petitioners and till the disposal of the said writ petition, the final order of the hearing conducted by the 7th respondent had not been communicated to the parties.
20. It is also not the case of the parties that the final order was communicated by the 7th respondent as on the date when the hearing of the instant writ petition was concluded.
21. Since more than six months have elapsed from the date of conclusion of hearing in the proceeding under Section 10(3) of the 1964 Act and the order under Section 10(3) is yet to be communicated to the parties, this Court is of the considered view, that the parties have to be afforded an opportunity of

hearing afresh by the 7th respondent in the proceeding under Section 10(3) of the 1964 Act.

22. By the notice dated 17.11.2025, the 7th respondent only fixed a date for hearing under Section 10(3) of the 1964 Act on 16.12.2025. The 7th respondent cannot be faulted for giving a further opportunity of hearing to the respective parties in view of the peculiar facts of this case that after the conclusion of hearing under Section 10(3) of the 1964 Act by the 7th respondent, the order passed earlier under Section 10(4) of the 1964 Act was set aside in a writ petition at the instance of the petitioner.
23. In view of the subsequent events that took place after the conclusion of hearing in the proceeding under Section 10(3) of the 1964 Act, this Court is of the considered view that the 7th respondent was justified in fixing a further date of hearing on 16.12.2025.
24. The notice dated 17.11.2025 has to be construed to be a notice of hearing under Section 10(3) of the 1964 Act and the same does not suffer from any infirmity warranting interference under Article 226 of the Constitution of India.
25. Since the instant writ petition was filed prior to the date fixed for hearing as indicated in the notice dated 17.11.2025, and also that sufficient time has passed since the last date of hearing before the 7th respondent in the proceeding under Section 10(3) of the 1964 Act, the parties are directed to appear before the 7th respondent on May 18, 2026 at or about 12 noon along with the server copy of this order. The 7th respondent is directed to fix a date of hearing, which shall be duly intimated to the parties, and pass a reasoned order after affording an opportunity of hearing to the petitioner, the private respondents or their authorised representatives and communicate the reasoned order to the parties as expeditiously as possible but positively on or before June 12, 2026.
26. In the event any party/parties fail to appear on the date fixed for hearing, 7th respondent shall proceed in accordance with law and complete the entire exercise as indicated hereinbefore within the specified time limit.

27. The writ petition stands disposed of with the aforesaid observations and directions.
28. There shall be, however, no order as to costs.
29. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)