

Heard and Decided on
26.02.2026
Item No.971 (DL)
Court No.551
AJ.

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

W.P.A. 29494 of 2025

**Harishwar Mandal & Anr.
-Vs-
The State of West Bengal & Ors.**

Mr. Avishek Prasad,
Ms. Ankita Dey.

....for the petitioners.

Mr. Lalit Mohan Mahata, A.G.P.,
Mr. Rudranil De.

....for the State.

1. This writ petition assails the order dated August 21, 2025 passed by the Sub-Divisional Magistrate & Sub-Divisional Officer (Sadar), Malda as well as order dated November 17, 2025 passed by the District Magistrate, Malda directing removal of encroachment over PWD land.

2. Learned Advocate appearing for the petitioners submits that both the authorities have wrongly exercised jurisdiction under the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962 (hereafter 'the said Act of 1962') He invites the attention of this Court to an order dated May 21, 2025 passed by this Court in WPA 7883 of 2025 whereby this Court had directed the relevant State Authorities to proceed in accordance with the provisions of Section 10 of the West Bengal Highways Act, 1964 (hereafter 'the

said Act of 1964') and submits that the orders passed and the said Act of 1962 are without jurisdiction.

3. It is noticed that the authorities have conducted proceedings aimed at removal of encroachment, under the provisions of the said Act of 1962 and not under Section 10 of the said Act of 1964.

4. The petitioners contended that if the proceedings in question could not have been initiated under the said Act of 1962 at all (since the land in question is governed by the said Act of 1964 and is therefore excluded from the purview of the said Act of 1962) then both the orders passed by the respective authorities would be without jurisdiction.

5. Mr. Mahata, learned Additional Government Pleader submits that there has been a mistake on the part of the authorities concerned in conducting the proceedings under the wrong provisions of the statute. However, the same authorities had and have power for initiating and concluding proceedings even under the relevant provisions of the said Act of 1964.

6. Heard learned Advocates appearing for the respective parties and considered the material-on-record.

7. Section 10 of the said Act of 1964 provides for removal on encroachment. The same is extracted hereinbelow :-

“10. Removal of encroachment

(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 authorized 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 authorized under sub-section (1) may make an application to [an Executive Magistrate] [Words substituted for the words 'a Magistrate of the first class' by W.B. Act 28 of 1978.], 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 authorizing 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 the Magistrate made under sub-section (3) he may,

within fifteen days 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).”

8. A meaningful reading thereof would indicate that a proceeding for encroachment is to be initiated by an Executive Magistrate having jurisdiction over the area, not being the District Magistrate for removal of encroachment and delivery of the land encroachment upon to the Highway Authority.

9. An order passed by such Magistrate would be appealable before the District Magistrate under Section 10(4) of the said Act of 1964. In the case at hand, a notice has been issued to the petitioners and the petitioners have been heard by the Sub-Divisional Magistrate & the Sub-Divisional Officer (Sadar) who is a competent Authority under Section 10(3) of the said Act of 1964. The petitioners have carried the matter in appeal before the District Magistrate who is the Appellate Authority under Section 10(4) of the said Act of 1964. It is settled law that if there are two sources of power and the authority concerned exercises power through one of them by mentioning a wrong provision, such exercise of power would not be invalidated merely by reason of the same being exercised under a wrong provision if it is valid under the other provision. (See:

Lekhraj Satram Das Lalvani vs. Deputy Custodian cum Managing Officer & Ors. reported at ***AIR 1966 SC 334***; ***N. Mani vs. Sangeetha Theatres & Ors.*** reported at ***(2004) 12 SCC 278***).

10. It is equally settled that in cases where public interest is involved mere making out of a law point may not weigh with Court. (See: ***Ramniklal N. Bhutta vs. State of Maharashtra*** reported at ***AIR 1997 SC 1236***).

11. There is no prejudice caused to the petitioners by the hearing taken by any of the authorities inasmuch as the same were competent authorities even under the said Act of 1964.

12. It is submitted by the learned Advocate appearing for the petitioners that adequate opportunity of hearing has not been granted to the petitioners. However, it is apparent from the order dated August 21, 2025 that in course of hearing, the petitioners admitted that the petitioners have been occupying the subject land unauthorizedly since long and that the petitioners also admitted and agreed to remove the unauthorized structures. There is no contemporaneous objection as regards such recording. There is no exception taken to such recording even before by the Appellate Authority.

13. In such view of the matter, the assertion of the learned Advocate appearing for the petitioners that

opportunity of adequate hearing was not given to the petitioners cannot be acceded to.

14. This Court is therefore not inclined to entertain this writ petition.

15. WPA 29494 of 2025 stands dismissed. There shall be no order as to costs.

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

(Om Narayan Rai, J.)