

WPA/15228/2026
RABINDRA MANDAL AND ORS.
VS.
STATE OF WEST BENGAL AND ORS.

Mr. Pappu Adhikari, Adv.

....For the Petitioners

Mr. Amit Chakraborty, A.G.P.

Mr. Jatindev Singh Dhatt, Adv.

...For the Respondent-State

1. Affidavit-of-service as filed on behalf of the writ petitioners is taken on record.
2. The contending parties are represented by their respective learned counsel.
3. On perusal of the entire materials as placed before this Court it reveals that in the instant writ petition the writ petitioner has impugned a notice under section 10(1) of the West Bengal Highways Act, 1964 ('Act of 1964' in short) dated 30.06.2026 as has been served upon him, copy whereof is annexed at page-48 of the instant writ petition.
4. It is submitted on behalf of the writ petitioners that such a notice has been served upon the writ petitioners without making proper demarcation by the jurisdictional B.L.&L.R.O. It is, thus, submitted that for that reason the impugned notice may be set aside.

5. Per contra, learned advocate appearing on behalf of the Respondent-State submits before this Court that the process of demarcation is going on by the jurisdictional B.L.&L.R.O.
6. For effective adjudication of the instant *lis* this Court at the very outset proposes to look to section 10 of the Act of 1964, which reads as follows:-

“10. (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 authorised 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 authorised under sub-section (1) may make an application to a Magistrate of the first class, 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 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.

(4) If the person responsible for the encroachment is aggrieved by the order of the Magistrate made under subsection (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).”

7. Keeping in mind the aforementioned legislative provision, if I look to the factual aspect as involved in the instant writ petition, it appears that even after issuance of notice under section 10(1) of the Act of 1964 the writ petitioners are not remediless. It appears further that their remedy lies before the jurisdictional S.D.O. in a proceeding under section 10(3) wherein they had every opportunity to ventilate their grievance/substantiate their contention by filing proper written objection.
8. No case has been made out for exercising high prerogative writ jurisdiction of this court despite availability of efficacious, effective and statutory remedy.
9. With the aforementioned observation, the instant writ petition is **dismissed**.
10. Before parting with, it is, however, made clear that while disposing of the instant writ petition this Court has not gone into the merit of the instant writ petition *vis-à-vis* the impugned notice dated 30.06.2026.
11. There shall be no order as to costs.

(PARTHA SARATHI SEN, J.)