

WPA/15523/2026
MAYAPUR BAMANPUKUR ROCKSHAW AND TOTO
WELFARE ASSOCIATION AND ANR.
VS.
STATE OF WEST BENGAL AND ORS.

Mr. Bikram Banerjee, Adv. (Through V.C.)
Mr. Sandipan Das, Adv.
Mr. Ataur Rahaman, Adv.
Mr. Sagar Dey, Adv.

....For the Petitioners

Mr. Amit Chakraborty, A.G.P.
Ms. Sarda Sha, Adv.

...For the Respondent-State

1. Affidavit-of-service as filed on behalf of the writ petitioners is taken on record.
2. The writ petitioners and the Respondent-State are represented by their respective learned counsel.
3. The subject-matter of the instant writ petition is the notice under section 10 of the West Bengal Highways Act, 1964 ('Act of 1964' in short) as has been issued by the Respondent No.14 authority, copy whereof is annexed at Page No.62 of the instant writ petition.
4. At the time of hearing, learned advocate appearing virtually on behalf of the writ petitioners submits before this Court that the notice impugned is *per se* illegal inasmuch as the Respondent No.14 by issuing the impugned notice made an endeavour to evict the

writ petitioners from their lawful possession over the property in question without giving any adherence to the provisions of section 10 of the Act of 1964. It is submitted further that the writ petitioners have absolute right, title and interest over the property in question which would be evident from the photocopies of the document as have been annexed with the instant writ petition.

5. Per contra, learned advocate appearing on behalf of the Respondent-State submits before this Court that the instant writ petition is prematured and is not maintainable.
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.** On careful perusal of the aforementioned legislative provision it appears to this Court that it is the legislative mandate that in the event the Highway authority notices an encroachment on road, street, pathway or land, which are declared to be a highway under section 3(1) of the Act of 1964 and/or such encroachment has been done on a highway in contravention of section 8, the Highway authority shall serve a notice upon such encroacher for removal of the encroachment. It further appears that in the event such encroachment is not removed within the specified time, the Highway authority shall approach the Executive Magistrate and the said Executive Magistrate after giving due opportunity of hearing to the alleged encroacher may pass a reasoned order for removal of encroachment.

8. Keeping in mind the aforementioned legislative provision, if I look to the facts and circumstances as involved in the instant writ petition, it appears that the writ petitioners challenged a notice as issued by the Respondent No.14 which has been issued practically under section 10(1) of the Act of 1964. It further appears to this Court that in the event the writ petitioners have any grievance with regard to the said notice and/or in the event the writ petitioners say that they are lawful owners of the property in question in respect of which the said notice has been served, they can ventilate their grievance before the jurisdictional S.D.O., that is, the Respondent No.11 at the stage of the proceeding under section 10(3) of the Act of 1964.
9. On careful perusal of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, this Court finds no cogent reason on the part of the present writ petitioners to approach this Court in its high prerogative writ jurisdiction at least at this stage despite availability of suitable, efficacious, effective and statutory remedy.
10. With the aforementioned observation, the instant writ petition is **dismissed**.
11. 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 and thus all points are kept open for adjudication by the Respondent No.11, if at all any request is made by the Respondent No.14 to the Respondent No.11 for removal of alleged encroachment.

12. There shall be no order as to costs.

(PARTHA SARATHI SEN, J.)