
(2013) 07 CAL CK 0136
In the Calcutta High Court
Case No : Writ Petition No. 16881 of 2013

Pradip Atta and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Citation : (2013) 4 WBLR 856

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Kallol Basu and Jyoti Prakash Chatterjee, for the Appellant; Satyajit Mondal, Amar Nath Sen, Sukumar Bhunia, Swagata Datta for the Respondent No. 7, Sakya Sen and Priyanka Tibrewal for the State, for the Respondent

Judgement

Jyotirmay Bhattacharya, J.—Admittedly, the petitioners are the unlawful encroacher of the government land lying at Plot No. 163, Mouza-Khandalia, J.L. No. 16, P.S.-Ramnagar, District-South 24-Parganas. They have raised permanent construction on such encroached government land. A joint survey was conducted by the officials of the Highway Authority and the petitioners for identifying the government land, which was encroached by them. The encroached portion of the government land has been identified and demarcated. The Assistant Engineer/ Highway Authority, Falta E.P.Z. Highway Sub-Division P.W. (Roads), Directorate served a notice dated 7th June, 2013 u/s 10 of the West Bengal Highways Act, 1964 upon the petitioners inviting them to remove and/or demolish such structure to the satisfaction of the Highway Officer before 14th August, 2013, With a rider that in the event of failure to comply with the said notice within the time allowed to them, the authority concerned will demolish the structure and the expenses of such demolition and/or for removal of such structure will be recovered from the petitioners. This step was taken by the Highway Authority for implementation of an order passed by the learned Single Judge of this Court on 3rd September, 2010 in W.P. No. 12912 (W) of 2010. The petitioners have filed the instant writ petition challenging the legality of the said notice by contending inter alia, that the authority concerned who issued the said notice had no

jurisdiction to issue such notice under the said Act as the land where the petitioners constructed such structure, was not the Highway within the meaning of the Highway as defined in the West Bengal Highways Act, 1964 as no declaration as contemplated u/s 3 of the said Act, has been published in the official gazette declaring the said land as state Highway.

2. Let me now consider as to how far such contention of the petitioners is acceptable in the context of the West Bengal Highways Act, 1964.

3. Highway is defined in Section 2(c) of the said Act in the following manner:-

Section 2(c) "highway" means--

(1) any Government road, or

(2) any other road, street, path, way or land, other than a national highway within the meaning of the National Highways Act, 1956, which is declared by the State Government to be a highway u/s 3 and includes--

(i) the flanks, footpaths, pavements and drains adjoining such highway;

(ii) all bridges, culverts, causeways, carriageways and other structures built on or across such highway; and

(iii) any land in the possession of the State Government or any other authority adjoining such highway, used or intended to be used for purposes of the highway;

4. Thus, the definition of highway shows that every Government road is highway under the said Act. Government road has been defined u/s 2(bb) in the following way:

Government road" means a road, vested in the Government, or under the control and administration of the Public Works Department of the State Government, and includes--

(i) the slope, beam, borrow-pits and side-drains of any such road;

(ii) all lands and embankments vested in, or under the control and administration of, the said Public Works Department, and attached to a Government road;

(iii) all bridges, culverts or causeways built on or across any Government road; and

(iv) all fences and posts on any Government road or on any land attached to a Government road, and all road-side trees on such land;

Provided that nothing in the definition shall affect the provisions of the Calcutta Municipal Act, 1951, or of any rule or by-law made thereunder, in so far as they empower the Corporation of Calcutta to take action in respect of the Government roads now under the control of the Corporation.

5. Section 3 of the said Act provides that the State Government may, by

notification in the official gazette declare any road, street, path way or land as the highway. This declaration, in my view, is necessary only when the State Government wants to declare any other road, street, pathway etc. as mentioned in Section 2(c) as highway, in addition to the Government Road as referred to in Section 2(bb) of the said Act.

6. In my view, no declaration u/s 3 is necessary in respect of the Government road which itself is a highway independent of any such notification in view of the provision contained in Section 2(c) read with Section 2(bb) of the said Act.

7. Since undisputedly the administration of the encroached part of the land is under the control and/or management of the Public Works Department of the State, this Court has no hesitation to hold that the encroached part of the land is a part of the highway and as such, the West Bengal Highways Act, 1964 is applicable to the encroached part of the land. Thus, this Court has no hesitation to hold that the authority which issued the impugned notice did not exceed its jurisdiction by issuing such notice u/s 10 of the said Act.

8. This Court does not find any illegality in the said notice. As such, this Court refuses to grant the relief, which the petitioner has claimed in this writ petition.

9. The writ petition stands rejected.

10. Since the unlawful encroachers have no right to protect their illegal possession in their encroached land by seeking protection from the Court of law against the lawful owners thereof, this Court, permits the petitioners to remove the said structure from the encroached land positively within a period of fortnight, in default the concerned authority under the Highways Act will be free to remove such construction from the said encroached portion of the land in occupation of the petitioners and recover possession thereof from them and realise the cost of such demolition and damages etc. from the petitioners.

11. It is however, made clear that while removing the petitioners from such encroached portion of the land, the Highway authority will follow the provision contained in sub-sections 2 and 3 of Section 10 of the said Act.

12. Having regard to the fact that recovery proceeding was initiated by the Highway authority against the petitioner, for implementing the earlier order of this Court, this Court holds that initiation of such recovery proceeding against the petitioner alone leaving the other illegal occupier therein untouched is not illegal on account of discriminatory treatment given to petitioner as the other occupiers who remain untouched, need not be removed from their occupation, for implementation of the earlier order of this Court. Urgent Photostat certified copy of this order, if applied for, be supplied to the learned Advocate for the petitioner immediately.