

**01.10.2024**

Item No.06

Crt.No.02

b.r.

**WPA 24369 of 2024  
IA No. CAN 1 of 2024**

***Shyamsundar Singh & Ors.***  
***-vs-***  
***The State of West Bengal & Ors.***

**Mr. Bikash Ranjan Bhattacharya, Sr. Adv.**  
**Mr. Purbayan Chakraborty**  
**Mr. Deeptangshu Kar**  
**.... For the petitioners.**

**Mr. Chandi Charan De, Ld. AGP**  
**Mr. Anirban Sarkar**  
**.... For the State.**

**Mr. Balaram Pandit**  
**Mr. Krishna Deo Das**  
**... for the added respondent no.5 to 7.**

Affidavit of service filed in Court today, is taken on record.

Mr. Bikash Ranjan Bhattacharya, learned Senior counsel appears for the petitioners.

The principal challenge in this writ petition to the impugned order dated **September 10, 2024 at page-216** to the writ petition is that the first authority and also the appellate authority while passing their respective orders have not come to a specific finding with reasons with relevant materials whether the subject land is part of the relevant Highway whereupon the encroachment has been found. The learned Senior

counsel further submits unless there is a specific finding with reasons and supported materials that the encroachment has been found on the relevant Highway, the **Highway Act of 1964** will not apply and in that case the entire proceeding and all further steps followed by that for removal of encroachment under the **1964 Act** stands vitiated.

Learned Senior counsel has submitted that the appeal **annexure p-9 at page-132** to the writ petition preferred by the writ petitioners before the appellate authority does not show that these points were taken by the petitioners while preferring the appeal before the appellate authority but the said point being a fundamental point and a purely point of law being the foundation of the case made out by the writ petitioners, such point must receive attention of the appellate authority with a reasoned decision.

The second limb of submissions of learned Senior counsel is covered under the **Prayer (c)** to the writ petition. Such point shall be considered later and not at this stage.

Mr. Chandi Charan De, learned Additional Government Pleader appearing for the State-respondents submits that since the point urged on behalf of the petitioners today in this writ petition was not taken by the petitioners before the statutory

appellate authority, no decision was rendered by the appellate authority and as such there is no infirmity in the impugned appellate order dated **September 10, 2024**.

Considering the rival contentions of the parties and upon perusal of the materials on record and on a close scrutiny of the said impugned appellate order dated **September 10, 2024**, it appears to this Court that there is no finding recorded by the appellate authority with reasons and materials, whether the stretch of land on which encroachment has been found is part of the Highway.

There is no doubt that this is the fundamental legal issue which shall determine the invocation of the provisions under the **West Bengal Highways Act, 1964** under which the steps for removal of encroachment has taken. The law is well settled that, when a point of law has been urged, even if for the first time in the judicial review and if the Court exercising its power under judicial review is of the opinion that the point is such which goes at the root of invocation of a particular power under a specific statute, the Constitutional Court exercising power under judicial review has vast jurisdictional authority to direct the authority to consider the issue and give its finding with reasons and materials.

In view of the above, the issue is remitted back before the **respondent no.4** to a **limited extent** to decide whether the stretch of land on which encroachment has been found is part of the State Highway or not. The **respondent no.4** shall decide the issue after granting an opportunity of hearing to the petitioners and then by passing a reasoned order by discussing the supportive materials in support of their finding to be arrived at.

This exercise shall be carried out and completed on or before **November 8, 2024**.

The **petitioners** and the **respondent no.4** then shall disclose the said reasoned decision by way of supplementary affidavit when the matter shall be taken up next.

There shall be an order of **status quo** with regard to the nature, character and possession of the subject stretch of land till **November 30, 2024**.

The writ petition shall appear under the heading **“Motion(Top)”** on **November 12, 2024**.

**In Re: CAN 1 of 2024.**

Mr. Balaram Pandit, learned advocate appearing through virtual mode on behalf of the applicants submits that this is an application for intervention of the parties at whose complaint, the writ petitioners

were found to be encroachers and were directed to be removed.

In view of the order passed in the main writ petition as would be evident hereinabove, no order is passed in this application today. This application shall appear along with the writ petition as directed above for further consideration.

**(Aniruddha Roy, J.)**