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W.P.A No. 5584 of 2020

IA No: CAN/1/2020(Old No. CAN 3320 of 2020)

Dulal Das
Versus
The State of West Bengal & Ors.

Mr. Srijib Chakraborty,
Mr. Suryaneel Das

...For the petitioner.

Mr. Subir Sanyal,
Mr. Ratul Biswas,
Mr. Sagnik Roy

... for the respondent nos. 7 & 8.

Mr. Raja Saha,
Mr. Pritam Choudhury

... for the State.

Considering the urgency pleaded by the petitioner in CAN 3320 of 2020, the instant writ petition is taken up for hearing via video conference.

Accordingly, the application being CAN 3320 of 2020 is disposed of.

The petitioner is aggrieved by the fact that a wall has collapsed as a result of "Amphan Cyclone" and he has attempted to reconstruct the wall and include a gate thereat which has been obstructed by the private respondents.

The private respondents contend that the wall is on their property on which is a co-educational government aided school.

They submit that the writ petitioner never had egress and ingress through the wall nor was there ever a gate existing thereat.

Counsel for the petitioner, however, contends that the only egress and ingress to his premises was through the wall and that absence of the gate on the wall would extinguish the egress and ingress to his property.

A Co-ordinate Bench of this Court has called a report from the Block Development Officer, Gaighata Block/the respondent no. 3.

The Block Development Officer, Gaighata Block being the respondent no. 3 submitted a report dated 10th September, 2020. Detailed documents are annexed to the report which is comprehensive. The report was prepared after hearing all the parties. It has been concluded that the dispute is primarily civil in nature. The conclusions in the report are indicated in paragraph 19 which is set out herein below:

“19. It appears from the joint field inspection that

- (a) The brick wall in question in the southern side of the land of the petitioner and road in question is existing in the south of the said brick wall.
- (b) The existing road in question yet to be recorded in R.S or L.R map.

- (c) The petitioners land, the wall in question and adjacent road in question all are connected with same part of Plot No.-R.S 177 & 178 corresponding to L.R. 228 & 229 under mouza 56 Purba Sonatikari of Chandpara Gram Panchayat.
- (d) Only Sketch map (not to scale) prepared by the Amin (attached as Annexure-B-1) concerned. Actual position of the said boundary cannot be traced out without proper demarcation of private land area of the petitioner.
- (e) It is necessary to decide actual position of the Brick wall by taking field measurement i.e. demarcation of boundary of private land properly whether it is situated over the private land of the petitioner or not as the petitioner claimed in his petition.
- (f) On the other hand the respondents on behalf of the school authority also submitted some documentary evidence in support of their claim as owner and creator of the said wall and said road in question along with witness statement.
- (g) As per existing guideline of the Land Department (WB) measurement over the

private land cannot be demarcated without the specific order of any competent court.

(h) The matter is purely land dispute.”

Since it is absolutely clear from the aforesaid report of the Block Development Officer, Gaighata Block/the respondent no. 3 that there are disputed questions of fact insofar as the claims of the petitioner are concerned with regard to the right of erecting a gate on wall in question, the Writ Court cannot entertain the dispute.

The parties may approach to the suitable civil forum to agitate their grievances.

It is made clear that the civil forum shall proceed to decide the matter uninfluenced by any observation made herein above. The report of the concerned B. D. O. is kept with the record.

Copy of the report has been served on the petitioner.

With the aforesaid observations, the instant writ petition is disposed of.

No order as to costs.

All parties are to act on a server copy of this order on the usual undertakings.

(Rajasekhar Mantha, J.)

