

Daily List 10.
Bpg.

December 21,
2020

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
(Via Video Conference)**

W.P.A. No.8229 of 2020

**Mahadeb Doloi
Versus
The State of West Bengal and others**

Mr. Gopal Chandra Ghosh,
Mr. Sobhan Majumder.
...for the petitioner.

Mr. Satyajit Mandal,
Mr. Amarnath Sen.
...for the respondent no.6.

Mr. Dhruba Mukherjee,
Mr. Srikumar Mandal.
...for the respondent no.7.

On consent, this matter is taken up for hearing, although the same is appearing in the list under the heading 'To be mentioned'.

The petitioners have approached this Court with the grievance that the private respondents, with the help of the police authorities have demolished the property of the petitioners.

Learned senior counsel appearing for the petitioners places an order dated March 15, 2016 passed by a co-ordinate Bench in W.P. No.3447(W) of

2016 and submits that the learned single Judge merely granted liberty to the petitioners therein (private respondents in the present writ petition) to approach the concerned Magistrate in terms of the relevant provisions of the Code of Criminal Procedure and that if such an approach was made, the same should be considered and decided in accordance with law at an early date. Learned senior counsel submits that mere liberty to approach the criminal court did not clothe the private respondents or the police authorities with the power to demolish the petitioners' property.

Learned counsel appearing for the private respondents submits that such allegations of demolition are categorically denied by the private respondents. It is submitted that the property-in-question is a 'baram' pathway and the private respondents have a right of user of such pathway, which cannot be obstructed by the petitioners.

Be that as it may, it is admitted by both sides that a suit is pending before a competent civil court where the respective rights of the petitioners and the private respondents are in contention. Since disputed questions of fact are involved in the present dispute, which would necessitate the adduction of evidence for adjudicating such questions, it is beyond the charter of

the writ court to enter into such dispute and pass any mandatory direction.

Accordingly, W.P.A. 8229 of 2020 is disposed of by granting the petitioners liberty to approach the civil court for ventilating the petitioners' grievances as alleged in the present writ petition. If such an approach is made, the civil court shall decide on the same upon hearing the concerned parties without being influenced in any manner by any of the observations made in this order.

There will be no order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)