

Item No.100

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

11.03.2021
Ct-24

W.P.A.118 of 2021
Piku Jha
v
The State of West Bengal & Ors.

Mr. Pinaki Dhole
... for the petitioner.

Mr. Ayan Banerjee
... for the State.

Mr. Abhishek Prasad
... for the respondent no. 10.

This writ petition is a sequel to the earlier writ petition filed by the private respondents. The private respondents on an earlier occasion filed a writ application being WP 14238(W) of 2019 (Sankar Jha & Ors. v. State of West Bengal & Ors.) In the said writ petition the case was made out that the Panchayat has used the land of the petitioners without acquiring the same and without payment of any compensation. The Court vide order dated January 6, 2020 directed the District Magistrate to deal with the representation filed by the petitioners after giving an opportunity of hearing to the parties.

In compliance of the order passed by the Court the District Magistrate afforded an opportunity of hearing to the parties and passed an order on November 13, 2020. The District Magistrate directed the petitioners to submit a written statement before the Block Development Officer, Ratua-II, who was directed to consider the written statement and to instruct the Pradhan, Araidanga Gram Panchayat for further action. The parties who were heard by the District Magistrate were the petitioners in the earlier writ petition and the Block Land & Land Reforms Officer, Ratua-II.

The Araidanga Gram Panchayat in an order dated November 18, 2020 permitted the private respondents herein to construct the boundary wall at their own expenses keeping the road ten feet intact which stretches from the North to the South over Plot No. 537 and leaving six feet of the road over Plot Nos. 536 and 537 for public interest.

The petitioner in the instant writ petition submits that the land in question which the private respondents herein claimed to be their personal land is actually a lane which is a private lane used by all the inhabitants of the said area. The same is recorded as "Path" in the record of rights maintained by the office of the Block Land & Land Reforms Officer. In the record of rights it

has been recorded that the said land is used as pathway for the general public.

The petitioner herein submits that the residents of the said area voluntarily gave up a portion of their personal land for use as path of the local people. The petitioner ought not to be permitted to construct a boundary wall on the said land, which is being used as pathway.

At the time of taking a decision in the matter the District Magistrate ought to have considered the convenience of all the persons who use the said pathway for travelling and the Pradhan also ought to have considered that the said pathway is used by the general public. The Pradhan ought not to have permitted the private respondents to construct a boundary wall by blocking portions of the land presently used as public pathway. If the Pradhan permits the private respondents to construct boundary wall, similar type of prayers will come up in future from the other residents who have given up a portion of their private land for the use of the general public as pathway. Constructing a wall over the pathway will reduce the width of the land and the same may pose a problem for free and smooth movement of vehicles. The right to free movement of all the residents of the area and particularly those who have voluntarily given up a portion of their land will be infringed and they

will be seriously prejudiced if a wall is permitted to be constructed over the pathway used by the general public.

As the land in question has admittedly not been acquired by any public body or the State, accordingly, there is no question of payment of compensation for use of the land by the public of the area. The land appears to have been used as a public pathway for a pretty long time.

In view of the above, the respondent no. 3 herein being the District Magistrate, Malda is directed to revisit the issue by taking into consideration the representation filed by the petitioner herein and by giving an opportunity of hearing by issuance of a public notice so that the matter can be resolved once and for all. Steps shall be taken by the District Magistrate, Malda within a period of four months from the date of communication of a copy of this order. Till a decision is taken by the District Magistrate, Malda the order passed by the Pradhan of the Araidanga Gram Panchayat on November 18, 2020 shall not be given effect to by the parties. The District Magistrate, Malda shall pass necessary orders and publish the same for general information.

The District Magistrate, Malda shall permit the interested parties to place relevant documents in support of their stand at the time of hearing.

In the event the State intends to acquire the land in question in greater public interest then necessary steps may be taken by the appropriate authority strictly in accordance with law.

WPA 118 of 2021 stand disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)