

01.09.2021
Sl. No.17
srm

W.P.A. No. 13148 of 2021
Smt. Anima Dey & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Bidhayak Lahiri,
Mrs. Bhaswati Lahiri
...for the Petitioners.
Mr. Himadri Sikhar Chakraborty
...for the State-respondents.
Mr. Kushal Chatterjee,
Mr. Abirlal Chakraborty
...for the Respondent Nos.9&10.
Mr. Soumya Banerjee
...for the Kamarhati Municipality.

Affidavit of service is taken on record.

The petitioners are the owners and occupiers of a property situated at Holding No.602 and 602/1 Ward No.12 of the Kamarhati Municipality at 15/1, K.P. Mukherjee Road. It is the contention of the petitioners that there is a common passage alongside the said premises over which the respondent Nos.9 and 10 have been raising a construction. According to the petitioners, the construction has encroached into common passage over which the petitioners have an easementary right. The allegations have been made that the authorities of the Kamarhati Municipality had not taken steps despite several complaints lodged by the petitioners. The petitioners have complained before the municipal authorities and also the police authorities against the encroachment and

obstructions on the common passage and for removal of such materials, to enable the petitioners and their family members to use the same. The petitioners have challenged the inaction of the authorities and have prayed that a stop work notice be issued by the Kamarhati Municipality upon the respondent Nos.9 and 10 in addition to an interim order of removal of the building materials and blockage on the common passage. The petitioners pray that the mandatory open space of 4 ft. has not been kept by the municipality, as a result of which the common passage has been blocked and egress and ingress of the petitioners and their family members have been denied.

Mr. Chatterjee, learned Advocate appearing on behalf of the respondent Nos.9 and 10, submits that two civil suits have been filed by the parties with respect to the selfsame property. The respondents have filed a civil suit for declaration and permanent injunction. The petitioners have prayed for a decree declaring their easementary right over the alleged common passage and a permanent injunction restraining the respondent Nos.9 and 10 from encroaching into the common passage.

Mr. Banerjee, learned Advocate appearing on behalf of the Kamarhati Municipality, submits that the dispute is civil in nature and suits are pending between the parties and as such the municipality does not have any statutory obligation to

clear up the encroachment over the alleged common passage as prayed for by the petitioners.

It appears that the petitioners had been granted an ad interim injunction restraining the respondent Nos.9 and 10 from interfering and/or blocking the common passage. Subsequently, the said order was vacated. It appears that the respondent Nos.9 and 10 also filed a suit for declaration of right, title and interest over the property in question including the common passage. In the suit filed by the said respondents, an interim order has been passed restraining the defendants therein from changing the nature and character of the suit property. Aggrieved, a Misc. Appeal had been preferred by the respondent Nos.9 and 10. An ad interim order had been passed allowing the respondent Nos.9 and 10 to construct on the alleged common passage. It is submitted by the respondent Nos.9 and 10, that subsequently the Misc. Appeal has been disposed of allowing construction on the common passage.

This, however, is disputed by Mr. Lahiri, learned Advocate for the petitioners.

Having considered the rival contentions of the parties, the entire dispute is whether the respondent Nos.9 and 10 should be allowed to construct on the common passage. The allegations are of encroachment and denial of easementary right. On these issues two suits are pending. It is not for the

municipality to remove the material and encroachment over the common passage as the civil court is seisin of the matter. Unless the right of the petitioners is declared by the civil court or there is an order of injunction restraining the user of the common passage by the respondent Nos.9 and 10, no orders can be passed upon the municipality in this proceeding. It is for the petitioners to pray for appropriate relief in the suits. Moreover, the user of common passage by the respondent Nos.9 and 10 is a subject matter of the suit and it is submitted that the construction has been allowed by the lower appellate court.

Under such circumstances, no order can be passed in this writ petition as it is not for the municipality either to decide the title or ownership or possession of the common passage in question and any order would amount to interference with the orders of the civil court.

This writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)