

AD. 30.
November 17, 2021.
MNS.

(Through Video Conference)

WPA No. 22926 of 2019

Chopan Sekh alias Chopan Ali Sekh
Vs.
The State of West Bengal and others

Mr. Nilanjan Adhikari

... for the petitioner.

Affidavit-of-service filed in Court today be kept on record.

Despite service, none appears on behalf of the respondents.

The grievance of the petitioner is that the private respondents are encroaching upon a land, which is owned by the Public Works Department (in short 'PWD').

Learned counsel appearing for the petitioner contends that the said portion of land is the only passage of ingress and egress regarding the petitioner's adjacent property. Despite having given representation in that regard to the police authorities, which is annexed at page 33 of the writ petition, the police have failed to take any action thereon.

However, it is clear that the petitioner cannot espouse the cause of the PWD. The only right of the petitioner on the land alleged to be blocked by the private respondents can arise in the nature of easement of necessity, which has to be proved before a competent

civil court with the additional proof regarding the petitioner having title in respect of the adjacent plot and the fact that the land-in-question is the only path of egress and ingress to the petitioner's property. Such questions are in the nature of questions of fact, requiring adduction of evidence at length, and, thus, cannot be adjudicated either by the PWD, or by the police or by this Court under Article 226 of the Constitution of India. As such, there is no scope of interference in the matter.

WPA No. 22926 of 2019 is, accordingly, disposed of by granting the petitioner liberty to approach the competent Civil Court with the grievance that the rights of the petitioner in respect of the property-in-question is being infringed by the private respondents, if the petitioner so desires. In the event if such approach is made by filing a properly constituted suit, the Civil Court will consider the same and the scope of grant of interim order, if any prayed for by the petitioner, without being influenced in any manner by any of the observations made herein.

It is further clarified that this Court has not gone into the merits of the respective contentions of the private respondents in respect of the property-in-question.

The petitioner is given further liberty to approach the appropriate Highway authorities, in the event of the petitioner having any grievance within the purview of Section 10 of the West Bengal Highways Act, 1964.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)