

19.05.2022
Court No. 19
Item no.24
CP

W.P.A. No. 5157 of 2021

Swapan Kumar Paul

Vs.

The Chairman, Mahestala Municipality & ors.

Mr. Lakshminath Bhattacharya

...for the petitioner.

Mr. Ansar Mondal

Ms. Srilekha Bhattacharyya

....for the State.

Mr. Jayanta Mahanty

Ms. Sahana Mukherjee

...for the Mahestala Municipality.

The allegation is that the Mahestala Municipality has grabbed the property of the petitioner situated at Dag No. 350, 356 pertaining to Khatian No. 208, J.L. No. 49, in Mouza – Parbanglam under the Mahestala Municipality (hereinafter referred to as ‘the municipality’) and constructed a concrete road over a narrow passage between the said plots. It is alleged that the road has been constructed on an undivided property. A civil suit is pending between the co-sharers and an order of injunction has also been passed.

The learned advocate for the municipality submits that a water pipeline has been laid through the common passage and the passage has been used

as a village road for years together. The passage has been paved in order to avoid water logging and inconvenience to the people. The electricity department has also drawn electric connection through the said passage. It is further submitted that no further construction is going on. It is also undertaken by the municipality that further construction on the narrow passage shall not be made and the municipality will not claim any equity over the road, if the passage is declared to be within the share of the petitioner after conclusion of the partition suit.

The police authorities have filed a report from which it appears that the paved road existed for public use and the petitioner did not have any possession over the said road. In any event, if the said narrow passage/common passage is a subject matter of the civil suit, the decision of the civil court shall be binding on the parties to the suit as also the municipality with regard to the right, title and interest over the narrow passage. The report is taken on record.

If it is held by the learned civil judge that the petitioner has exclusive right over the said passage, in that event, the petitioner shall enjoy the passage as his own as per the decree of the civil court and the

municipality shall not raise any claim with regard to the said road.

No equity shall be claimed by the municipality in respect of the said road.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)