

S/L 21
05.09.2022
Court. No. 19
GB

W.P.A. 12361 of 2022

Sk. Ali Mostafa
VS
The State of West Bengal & Ors.

Mr. Mohinoor Rahaman,
Ms. Maria Rahaman,
Ms. Iqra Rahaman.

...for the Petitioner.

Mr. Asish Kumar Guha,
Mr. Naren Ghosh.

...for the State.

Affidavit-of-service filed in Court today, be kept with the records.

The petitioner alleges that the authorities of Marokhana Gram Panchayat have been constructing a road through a portion of the land of the petitioner, being L.R. Plot No.1870 of Mouza-Marokhana.

The petitioner submits that Section 44 of the West Bengal Panchayat Act, 1973 has been violated. The metal road, Rajhati to Panchauli is allegedly being constructed by unauthorized encroachment on the private land of the petitioner. For convenience, Section 44 of the West Bengal Panchayat Act, 1973 is quoted below:-

“Where a Gram Panchayat requires land for carrying out any of the purposes of this Act, it may negotiate with the person or persons having interest in the said land, and if it fails to reach an agreement, it may make an application to the District Magistrate for the acquisition of the land, who may, if he is satisfied that the land is required for a public

purpose, take steps to acquire the land and such land shall, on acquisition, vest in the Gram Panchayat.”

This Court is not in a position to enter into the factual dispute raised by the petitioner. Identification of the land, over which such construction is alleged, cannot be made by the writ Court.

This writ petition is disposed of with a direction upon the District Magistrate, Hooghly to enquire into the matter and come to a finding as to whether the allegation of the petitioner is correct or not. Such finding shall be arrived at upon considering the case of the petitioner and also upon hearing the panchayat authorities and the Block Development Officer, Khanakul-II Block. If it is found upon enquiry and after necessary inspection and demarcation, that a portion of the land of the petitioner is being used for the alleged road, either without the consent of the petitioner or without any acquisition, the authorities shall proceed in accordance with law as per Section 44 of the West Bengal Panchayat Act, 1973. Proposal for outright purchase can also be made by the authority. Such decision shall be arrived at within a period of 8 weeks from date of communication of this order and a reasoned order shall be passed and communicated to all the parties upon due notice to them. If the allegations of the petitioner are not correct, reasons of such finding shall be disclosed in the order.

It is made clear that the construction shall abide by the final decision of the District Magistrate.

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 learned advocates' communication.

(Shampa Sarkar, J.)