

S/L 9
28.07.2022
Court. No. 19
GB

WPA 17173 of 2021

Sunil Kumar Singh & Ors.
VS
The State of West Bengal & Ors.

*Mr. Sayan Sinha,
Mr. Rishbh Dutta Gupta,
Mr. Aniruddha Ganguly.*

...for the Petitioners.

*Mr. Amal Kumar Sen,
Mr. Jaladhi Das.*

...for the State.

*Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhon Majumdar,*

....for the H.M.C.

*Mr. Randhir Singh,
Mr. Ranajit Ray.*

...for the Respondent Nos.5 to 8.

Despite service, none appears on the behalf of the respondent nos.9 and 12. The added respondent, Howrah Municipal Corporation has entered appearance.

The dispute between the petitioners and the respondent nos.5 to 12 have arisen over a construction of a boundary wall allegedly on Premises No.53/11/5, Bon Bihari Bose Road. The respondent nos.5 to 12 claim to be owners of Premises Nos.48 and 49, Bon Bihari Bose Road.

According to the respondent nos.5 to 12, on premises No.53/11, there is an existing 14 ft. wide passage, which had been used by the said respondents as a pathway for ingress and egress to their respective plots. Without demarcation of premises Nos. 53/11/4 and 53/11/5, the boundary wall cannot be constructed by the petitioner. The boundary wall was allegedly being constructed covering the passage.

Such contention is denied by the petitioners. According to petitioners, the petitioners inherited the property being premises no.53/11/4 and purchased the property being premises no.53/11/5 from one Mohan Lal Singh to the extent of 1 Cottah 15 Sq. ft. and both the plots were created out of the premises no.53/11. The petitioners have exclusive right, title and interest over both the premises in question. The petitioners submit that the plot no.53/11/5 around which a boundary wall is to be constructed, was a demarcated portion and that was why, a separate holding number was allotted by the Howrah Municipal Corporation.

The police report was considered on the earlier occasion, from which it appeared to the Court that the dispute was with regard to the entry and exit to the houses of the respondent nos.5 to 12.

It is further submitted that without proper demarcation with regard to the lands, used by the petitioners and the alleged pathway, the police authorities should not be directed by this court to assist the petitioners in the construction of the alleged boundary wall.

Mr. Banerjee, learned advocate appearing on behalf of the Howrah Municipal Corporation submits that separate holding numbers have been given to all the parties. However, whether there was an existence of 14 ft. wide passage or not, is a matter to be decided from the respective deeds and on actual survey and measurement of the area in question by the competent authority. Moreover, the contention of the respondent nos.5 to 12 with regard to the existence of a

pathway is not apparent from the records before this Court. If the said respondents are alleging easementary right over such passage, they must get their rights adjudicated by the appropriate court.

With regard to the contention that without demarcation of the lands of the petitioners, the boundary wall should not be permitted to be constructed, this Court is of the view that the petitioners must approach the competent authority to make a survey, on the basis of the deeds of the petitioners and the holding numbers, which have been allotted by the Corporation. Upon such demarcation, the petitioners shall be entitled to proceed in accordance with law. The survey shall be made by an inspection in the presence of all the parties.

The police authorities will keep a vigil and ensure that the respondent nos.5 to 12 do not physically obstruct the petitioners' enjoyment of the premises nos.53/11/4 and 53/11/5. If the said respondents are aggrieved, they must raise the issues, before the appropriate civil court.

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.)