

IN THE HIGH COURT AT CALCUTTA**CIVIL APPELLATE JURISDICTION**

(Appellate Side)

MAT 1163 of 2021**with****CAN 1 of 2021****with****CAN 2 of 2021****with****CAN 3 of 2021**

(Through Video Conference)

Reserved on : 02.02.2022

Pronounced on: 10.02.2022

Swapan Kumar Sahoo & Ors.

...Appellants

-Vs-

Sri Probodh Kumar Pramanik & Ors.

...Respondents

Present:-Mr. Supratic Roy,
Ms. Sudipta Roy,
Mr. Amit Dey, Advocates

... for the Appellants

Mr. Shamik Chatterjee,
Mr. Aditya Bikram Mahata, Advocates

..... for the Respondent Nos. 1 to 16

Mr. Prabhat Srivastava, Advocate

.....for the Respondent No. 26

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE****THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Rajarshi Bharadwaj, J:

1. By this appeal, correctness of the order of the learned Single judge dated March 6, 2019 passed in W.P.A. No. 25920 of 2018 (Shri Probodh Kumar Pramanik & Ors. Versus -The Union of India & Ors.) has been questioned by the writ petitioner who by an order of injunction restrained the respondents from constructing any road or develop the existing road on plot no. 167 in any manner whatsoever.

2. The writ petitioner/respondent herein had filed a writ petition W.P. No. 25920 (W) of 2018 under article 226 of the Constitution of India objecting to the widening of road by the concerned authorities. The facts of this case are that there exists an 18- feet wide panchayat moram road which is in poor shape as it was constructed three/four decades ago. The dilapidated road caused difficulties for the families who reside in the said village. Thus, the concerned authorities took charge under the scheme of Pradhan Mantri Sarak Yojona to widen and develop the road.

3. The Writ Petitioner/ Appellant objected to the widening of the road on the pretext that his land shall be encroached if the road is widened and developed by the local authorities. Neglecting his objection, the authorities in charge i.e., the Khanamohan Gram Panchayat and the Debra Panchayat Samiti had instructed the contractor to carry out repairing and widening work of the existing road since the condition of the road had become miserable and the entire village road had already been widened and repaired except about the 150 meters of road where the land is owned by the present writ petitioner.

4. The learned Single judge after hearing the learned counsel for the parties and perusal of the records, observed that an *“authority within the meaning of Article 12 of the Constitution of India is not entitled to encroach upon, construct or develop any land belonging to any private party without the due process of law.”* Moreover, if an authority has to construct or develop any existing road, it either has to acquire it or purchase it. In the instant case, neither did the authorities comply with the due process of law by acquiring the said private property nor did it purchase the land and there is no denying of the fact that the land is owned by the petitioners. The learned Single judge held that in such circumstances, none of the respondents would make any constructions on the plots described at pages 22 and 27 of the application.

In case there are any construction on such plots, the petitioners were at liberty to remove the same.

5. Submission of the appellants is that the learned Single Judge has failed to take into consideration that the public at large cannot be made to suffer due to inappropriate steps taken by the respondent authorities and that public rights should be given preference over the rights of a particular individual and the same submission is adopted by the respondent authorities.

6. An authority within the meaning of Article 12 of the Constitution of India is not entitled to encroach upon, construct or develop any land belonging to any private party without the due process of law. As stated correctly by the learned Single Judge, if an authority has to construct or develop any existing road, it either has to acquire it or purchase it. In the present case, neither did the authorities comply with the due process of law by acquiring the said private property nor did it purchase the road. In such a scenario, the contention of the appellants that the public rights should be given preference over the rights of a particular individual, does not hold good and the contention of the appellants that the public at large cannot be made to suffer due to inappropriate steps taken by the respondent authorities is not applicable in the instant case. Thus, no case is made out to interfere in the order of the learned Single Judge.

7. For the foregoing reasons, the appeal is found to be devoid of any merit which is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata

10.02.2022
PA(BS)