

S/L 118
03.11.2022
Court No.1
*Sourav/
Suvayan*

**IN THE HIGHCOUR AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION**

**MAT 89 of 2022
With
IA No: CAN 1 of 2022**

**Ajit Kumar Agarwala & Anr.
Vs.
The State of West Bengal & Ors.**

*Mr. Joyjit Choudhury
Mr. Sitesh Kumar Gupta
Mr. Ajay Singhal*

... for the appellants.

*Mr. Kunaljit Bhattacharjee
Mr. Alok Sah*

...for the private respondents.

*Mr. Subir Kumar Saha, Ld. AGP
Mr. Bikramaditya Ghosh*

...for the State.

Heard Mr. Joyjit Choudhury, learned Counsel appearing for the appellants, Mr. Bikramaditya Ghosh, learned Counsel appearing for the State and Mr. Kunaljit Bhattacharjee, learned Counsel appearing for the private respondents.

Writ petition being WPA No. 2076 of 2022 was filed by the present appellants being the petitioners for grant of two reliefs:

- i) construction of two roads to the tea factory leased out in favour of the petitioners/appellants by the State Government as proposed by him and;

- ii) not to renew trade licence in favour of the private respondent nos. 8 to 51 who are alleged to have encroached upon the government land coming under the leasehold area of the petitioners/appellants.

While disposing of the writ petition on 23.09.2022, Hon'ble Single Judge has specifically recorded that learned Counsel for the private respondents has no objection to construction of roads if the said roads go to the school, but by a laconic order, Hon'ble Single Judge has passed an order for construction of one road only cost for which is to be borne by the petitioners and His Lordship has not touched the question of construction of another road on merit. Similarly, the question of not to renew the trade licence in respect of the private respondents was also not considered by the Hon'ble Single Judge.

It is pertinent to mention here that against the order of demolition passed by Hon'ble Single Judge the matter was taken in appeal before the Division Bench. The Hon'ble Division Bench, in course of appeal, found that the State Government has no objection for construction of two roads as proposed by the petitioners/appellants provided the petitioners/appellants bear the cost of construction

of the roads. In view of such position, Hon'ble Division Bench directed the parties to bring those facts before Hon'ble Single Bench to give a finding and disposed of the appeal so preferred accordingly.

These facts were brought before the notice of Hon'ble Single Judge. In spite of that, order was passed on 23.09.2022 for construction of one road under the supervision of PWD but nothing was mentioned about construction of the second road leading to the factory.

Before us it is submitted by learned Counsel for the appellants and learned Counsel for the State that both of them have no objection if the two roads as proposed by the appellants are constructed provided the appellants bear the cost and affidavit has already been filed by the District Magistrate, Darjeeling (at page 283 of the appeal record) to that effect. So far as the private respondents are concerned, learned Counsel for the private respondents take the same stand and submits that the private respondents have also no objection for construction of the proposed two roads if the entry to the school is provided by the State at its own cost or at the cost of the petitioners/appellants.

When all the parties are agreeable for construction of two roads; one leading to the tea

factory of the appellants from the Lebong Cart Road and another for use of the villagers from Lebong Cart Road to the villages and an affidavit having already been filed by the learned District Magistrate, Darjeeling, to that effect along with feasibility report etc., we are of the view that those two proposed roads should be constructed within a timeframe as agreed between the appellants and the District Magistrate, Darjeeling and a by-lane should be provided from the road for public use to the school and cost of construction of the by-lane to the public school from the proposed road should be borne by the State as it is for the public purpose. Such by-lane shall only be constructed if there is no road for entry to the school. If there is, however, any alternative road for entry to the school without any inconvenience to public at large, this direction passed on the prayer of the learned Counsel for the private respondents shall be ignored.

From the impugned order, we find that the writ petition came to be disposed of by the Hon'ble Single Judge before exchange of affidavits by the parties. In course of hearing for interim relief in the present appeal, it is submitted by learned Counsel for the private respondents that suit for eviction at the instance of the appellants is pending against

the private respondents before the competent civil court.

All these being question of facts, we cannot possibly proceed to decide these points without exchange of affidavits by the parties in the main writ petition and the decision of Hon'ble Single Judge on such question of facts.

Taking into consideration all these facts, we remand the matter for decision afresh by Hon'ble Single Judge on the question as to whether trade licence in respect of the private respondents should be renewed or not renewed or it should be cancelled forthwith or not cancelled. So far as the roads are concerned, we having already decided the matter that question shall not be touched any more. On remand the party be given adequate time to file their affidavits and exchange the same amongst them and the matter shall be decided within four months from the date of completion of pleadings by the parties.

The appeal is accordingly disposed of.

The matter is remanded to Hon'ble Single Judge on the question referred to *supra*. The District Magistrate, Darjeeling is directed to take the issue of construction of two roads as per him/her affidavits filed before the Division Bench along with feasibility report etc. and after meeting

with the appellants or their representatives, timeframe may be worked out by which both the roads should be constructed. The cost of the roads shall be borne by the appellants. The construction of both the aforesaid roads should be completed before 1st June, 2023 or within the timeframe as agreed, whichever is earlier.

Accordingly, the appeal being **MAT 89 of 2022** along with the interim application being **CAN 1 of 2022** is disposed of.

(Chitta Ranjan Dash, J.)

(Kausik Chanda, J.)