

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

**FMA 151 of 2020
CAN 1 of 2020 (Old CAN 1303 of 2020)**

**Md. Abdus Salam & Anr.
Vs.
The State of West Bengal & Ors.**

For the Appellants : Mr. Younush Mondal, Advocate

*For the State : Mr. Santanu Kumar Mitra,
Ms. Rama Halder, Advocates*

*Heard & Judgment on: **July 24, 2023***

DEBANGSU BASAK, J.

- 1.** The appeal is directed against an order dated October 22, 2019 passed in WP No. 20153(W) of 2019.
- 2.** By the impugned order, the learned Judge held that, the subject matter was not appropriate to be dealt with by the Writ Court.
- 3.** Learned advocate appearing for the appellants submits that, the appellants are in possession of a plot being Dag no. 585. State

authorities constructed a road by encroaching a portion of Dag No. 585 thereby affecting the interest of the appellants.

4. Learned advocate appearing for the appellants relies upon a decision dated **June 17, 2022** passed by the Coordinate Bench in **FMA 75 of 2022 (Rabiul Islam & Ors. Vs. State of West Bengal & Ors.)** and submits that, same protection be granted to the appellants.

5. The appellants before us filed a writ petition being WP No. 20153(W) of 2019 which was disposed of by the impugned order dated October 22, 2019.

6. We perused the pleadings in the writ petition. In paragraphs 3 and 4 of the writ petition, the appellants claim that, they are in permissive possession of the land in question. No document is placed on record to establish any right, title and interest of the appellants in respect of land in question apart from the bare averment of permissive possession. The appellants are not the owners of the property concerned. The owners are not before Court. At least nothing is placed before us to suggest that the owners are aggrieved by the so-called illegal activities of the Public Works Directorate.

7. In absence of any right, title and interest of the appellants in respect of the plot in question being established conclusively, we are of the view that the learned Trial Judge rightly refused to entertain the writ petition by exercising discretion not to do so.

8. The impugned order, the learned Trial Judge observed that the order of dismissal of the writ petition will not prevent the appellants from taking due course of law as available.

9. In **Rabiul Islam (supra)** the co-ordinate Bench observed that, since there was no acquisition proceedings undertaken, a writ of

FMA 151 of 2020

prohibition was issued therein. The appellants there were not in permissive possession of the land in question.

10. In such circumstances, we find no merit in the present appeal. FMA 151 of 2020 is **dismissed** without any order as to costs. All connected applications are **disposed of**.

11. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

12. I agree

(Md. Shabbar Rashidi, J.)

Dd