

**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 158 of 2020

Mariam Bibi

VS.

The State of West Bengal & Ors.

For the Appellant : Md. Younus Mondal, Advocate

For the State : Mr. Tapan Kumar Mukherjee, AGP
: Mr. Somnath Naskar, Advocates

Heard on : July 25, 2023 & August 04, 2023

Judgement on : **August 04, 2023**

DEBANGSU BASAK, J.

- 1.** The appeal is directed against an order dated October 22, 2019 passed in W.P. 20154(W) of 2019.
- 2.** By the impugned order, the learned Judge held that the writ petition was not an appropriate matter to be dealt with by the writ Court.
- 3.** Petitioner claims right, title and interest in respect of the plot No. 587. There is a road pertaining to Plot No. 587. Appellant claims that

State authorities encroached upon Plot No. 587 for the purpose of construction of the road.

4. Learned advocate for the appellant relies upon an order dated June 17, 2022 passed in **FMA 75 of 2022 (Rabiul Islam & Ors. vs. State of West Bengal & Ors.)** for the proposition that, the State should not dispossess the appellant without due process of law.

5. Faced with the contention that State encroached upon the land belonging the appellant, a report was called for from the concerned Block Land & Land Reforms Officer, by an order dated July 25, 2023. Report in the form of an affidavit, as called for, filed in Court be taken on record.

6. From the report, it appears that, the concerned BL&LRO conducted a survey at the site concerned. He prepared a sketch map of the road as also location of the Plot No. 587. He also relies upon a writing of the Special Land Acquisition Officer to the effect that, 0.05 acre of Plot No. 587 was acquired by the State in an acquisition proceeding. The report states that, on enquiry, it was found that there was a road in Plot No. 587 to the extent of 550 sq.ft. The writing dated July 5, 2019 of the Special Land Acquisition Collector speaks of acquisition of 0.05 acres of land in Plot No. 587.

7. Therefore, on the basis of the materials on record, we are not in a position to return a finding that any land belonging to the appellant was encroached upon by the State for the purpose of construction of road.

8. In **Rabiul Islam & Ors.** (supra), the co-ordinate Bench observed that, State cannot take over land belonging to citizens without initiating acquisition proceedings.

- 9.** In the facts of the present case, there was an earlier acquisition proceeding in the year 1962 and that 0.05 acres of land comprised in Plot No. 587 was acquired.
- 10.** In such circumstances, we find no merit in the present appeal.
- 11.** FMA 158 of 2020 is **dismissed** without any order as to costs.
- 12.** 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.)

- 13.** I Agree,

(Md. Shabbar Rashidi, J.)