

15.06.23
Sl-08
Ct.32
(S.R.)

**FMA 892 of 2021
with
CAN 1 of 2018 (Old No. CAN 1581 of 2018)**

**Madan Chandra Samanta
v.
The State of West Bengal & Ors.**

Mr. Anil Kumar Chattopadhyaya
Mr. Dinesh Pani ... for the appellant.

Mr. Amal Kumar Sen, Ld. AGP
Mr. Lal Mohan Bose ... for the State.

The present appeal has been preferred against an order dated 21st December, 2017 passed in a writ petition being WP No.30752 (W) of 2017.

The order impugned reveals that the appellant's prayer was refused since according to the learned Court, he was seeking permission from the authorities to ply vehicles over an embankment of river.

Mr. Chattopadhyaya, learned advocate appearing for the appellant submits that in between his dwelling house and the PWD road there is a stretch of government land/pathway which belongs to the Irrigation and Waterways department. The said pathway is the only passage for egress and ingress to the appellant's dwelling house and previously Irrigation and Waterways department allowed the appellant to utilize the said pathway for such purpose upon accepting licence fees. However, such permission was discontinued without granting any opportunity of hearing to the appellant.

Aggrieved thereby, the appellant submitted a representation to the respondent no.2 but the same was not considered and as such he preferred the writ petition seeking a direction upon the respondents for consideration of his grievance.

He submits that the appellant's prayer was refused without considering the arguments advanced on his behalf and without appreciating the appellant's claim.

He further submits that the appellant does not want to ply any vehicle over the said pathway but he wants to utilize the said stretch of land only for the purpose of egress and ingress to his dwelling house upon paying the necessary fees.

Mr. Sen, learned Additional Government Pleader enters appearance on behalf of the State authorities and submits that there is no infirmity in the order impugned.

Heard the learned advocates and considered the materials on record.

The Writ Court was approached since the competent authority did not consider the appellant's prayer and did not take any decision. Instead of refusing the appellant's prayer, the learned Court could have relegated the matter for consideration to the appropriate executive functionary. It appears that the appellant wants to utilize the stretch of land/ pathway in between the PWD road and his dwelling house only for the purpose of

ingress and egress to his residence.

In view thereof, we grant liberty to the appellant to submit an appropriate representation to the competent authority being the respondent no.2 seeking permission to utilize the said stretch of land/ pathway in between his dwelling house and the PWD road only for the purpose of ingress and egress to his dwelling house.

In the event such representation is submitted by the appellant to the respondent no.2 within a period of six weeks from date along with a copy of the writ petition and the present order, the said respondent no.2 shall consider the same and pass a reasoned order, upon granting an opportunity of hearing to the appellant and communicate the said order to the appellant within a period of six weeks after receipt of the representation.

With the above observations and directions, the appeal and the connected application are disposed of.

There shall, however, be no order as to cost.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)