

20.3.2023
Ct.19/sl.8
sn

W.P.A. 4333 of 2023

Mst. Jyotsnatarra Begum

Vs.

The State of West Bengal & Ors.

Mr. Sanjib Seth

..for the petitioner

Mr. Raja Saha

Mr. S.P. Lahiri

..for the State

Ms. Mekhla Sinha

..for the zilla parishad

The petitioner has challenged the order passed by the District Magistrate, Howrah, which was communicated to the petitioner by a letter dated January 13, 2023. This Court finds that the order is cryptic and unreasoned. Moreover, the report of the Block Development Officer, which was relied upon by the District Magistrate, was not served upon the petitioner. Such failure, amounts to violation of principles of natural justice. The order of the District Magistrate is set aside and quashed.

The District Magistrate is directed to revisit the issue on the following points.

A) Whether the drain had been constructed on the area belonging to the petitioner which had been demarcated pursuant to the decree in the partition suit.

B) Whether a partition commissioner or any authority appointed in the civil proceeding had

demarcated 50% share of the petitioner in respect of the plots in question, namely, LR plot nos.107,108,109 of mouza Sekhrahati.

C) Whether the drain already existed, prior to the decree in the partition suit.

In order to ascertain the aforementioned points, physical inspection of the site in question shall be made by the Block Development Officer, in presence of the petitioner, the Pradhan of the concerned gram panchayat and the member of the gram panchayat from the constituency in which the lands are situated. The Block Land and Land Reforms Officer shall also be part of the inspection team.

It is the specific case of the District Magistrate that the concerned drain existed prior to the decree of the civil suit. The drain had been in existence for the past 30 years. Whereas, the petitioner submitted before the Court in the earlier writ petition and still maintains that only recently, the panchayat authorities had tried to take possession of a portion of the land of the petitioner for the purpose of construction of a new drain.

A report of such inspection shall be handed over to the petitioner and other parties. Parties shall respond to such report.

Thereafter, the entire matter shall be revisited for a decision by the District Magistrate in terms of the earlier order passed by this Court and on the basis of submissions and written documents to be filed by the petitioner before the District Magistrate, once such inspection is complete. The District Magistrate shall hear all the interested parties and pass a reasoned order.

The issues, which have been framed hereinabove, shall be decided and necessary orders shall be communicated to the parties.

No further interim order at this stage is required, as it is the specific contention of the authorities that no new construction is going on.

This writ petition is disposed of.

There will be, however, no order as to costs.

All parties are directed to act on the server copy of this order.

(Shampa Sarkar, J.)