

17th April,
2023
(AK)
08

W.P.A 6156 of 2023

Naba Kumar Mandal
Vs.
The State of West Bengal and others

Mr. Kaustav Banerjee
Ms. Ria Kundu
...for the petitioner.

Mr. Sujit Sankar Koley
...for the WBSEDCL.

Mr. Amal Kr. Sen
Mr. Lal Mohan Basu
...for the State.

The petitioner contends that the District Magistrate, South 24 Parganas acted *de hors* the directions of this court in failing to decide even *prima facie* as to whether the petitioner has right, title and interest in respect of the property over which the electricity connection of the private respondents have been taken.

By pointing out to the order dated October 14, 2022, which is the impugned order, it is argued that the Magistrate merely observed that the alternative route lies along the Panchayat road, without any examination of the materials-on-record or discussing the same.

Learned counsel further submits that vide order dated May 10, 2022 passed in WPA 6067 of 2022, the specific direction given to the Magistrate was to decide on

the objection taken by the petitioner to the installation of electricity poles over the disputed passage, upon *prima facie* deciding the right, title and interest thereto, which was not complied with by the District Magistrate.

Learned counsel for the State submits that there was sufficient compliance inasmuch as in his order dated September 22, 2022, which is also annexed to the writ petition, the District Magistrate clearly dealt with the issue and observed that it is understood that the road (alternative route) is constructed and maintained by Kalikapur No.1 Gram Panchayat.

Based on such finding as well as the inspection report filed pursuant to the Magistrate's direction, the conclusions in the impugned order were arrived at by the Magistrate.

As such, it cannot be said that the same was vitiated.

Learned counsel appearing for the WBSEDCL simply submits that the WBSEDCL complied with the directions of the District Magistrate and did not have any role to play in the alleged illegality.

That apart, by placing reliance on the order of this court dated May 10, 2022 passed in the earlier writ petition, it is submitted that this court had recorded the contention of the Distribution licensee that the passage-in-question is a public passage of the Panchayat.

It is seen from a perusal of the order dated May 10, 2022 passed in WPA 6067 of 2022 that the District Magistrate was specifically directed to decide on the objection taken by the writ petitioner to the installation of the electricity poles and giving a connection to the respondent nos. 8 to 10 over the disputed passage.

Such examination is found to be totally absent in the impugned order of the District Magistrate dated October 14, 2022.

In fact, a *prima facie* adjudication on the right, title and interest of the petitioner in respect of the property over which the WBSEDCL has given electricity connection to the private respondents, upon consideration of evidence produced by the parties and the materials-on-record, was required by the District Magistrate.

The mere recording by the District Magistrate in his order dated September 22, 2022 to the effect that “*it is understood that the road is constructed and maintained by Kalikapur no.1 Gram Panchayat*”, cannot absolve the District Magistrate of the responsibility of deciding the issues-in-question raised by the petitioner.

The report relied on by the Magistrate while passing the impugned order was merely an exhaustive field enquiry and specified merely whether any alternative possible route to effect electricity from the distribution

pole to the private respondent's premises could be worked out.

Such inspection, thus, did not pertain to the points raised by the writ petitioner at all and/or even touch the *prima facie* adjudication of the right, title and interest of the petitioner over the disputed property.

It is seen from the impugned order bearing Order No.3 dated October 14, 2022 passed by the District Magistrate, South 24 Parganas, that, in a most cursory manner, the Magistrate abdicated his duty to decide even *prima facie* on the issue of the petitioner's right, title and interest by making a half-sentence observation to the effect that the proposed alternative route lay along the Panchayat road.

Such mere finding, without any scrutiny, even primarily, of the deeds or documents produced by the petitioner regarding his right, title and interest was a travesty of justice and amounts to non-compliance of the specific direction incorporated in the order dated May 10, 2022 passed in WPA 6067 of 2022.

As such, the said impugned order cannot be sustained.

Accordingly, WPA 6156 of 2023 is allowed, thereby setting aside Order no.3 dated October 14, 2022 passed by the District Magistrate, South 24 Parganas, which is impugned in the present writ petition, and directing the

District Magistrate to re-hear the parties and upon a complete consideration of all materials produced by the parties, to come to a *prima facie* finding as to whether the petitioner has any right, title and interest over the property through which the connection has been given to the private respondents and, thereafter, to pass a just order in accordance with law keeping in consonance with his findings.

Such exercise shall be completed by the District Magistrate, South 24 Parganas as expeditiously as possible upon re-hearing the parties on the matter and re-scrutinizing the documents produced by the parties.

If need be, the parties shall be at liberty to produce further germane documents for the consideration of the District Magistrate.

Such exercise shall be completed within an outer limit of eight weeks from the date of communication of this order to the District Magistrate, by acting on a server copy of this order.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)