

April 19, 2023
Sl. No.11
Court No.19
s.biswas

WPA 7509 of 2023

Zahir Hossain
vs.
The State of West Bengal and others

Mr. Saikat Chatterjee,
Mr. Puranjan Pal, Advocates

... for the petitioner

Mr. Sandip Mandal,
Ms. Jayeeta Sinha, Advocates

... for the State

Mr. S. P. Lahiri,
Md. Habibur Rahman,
Mr. Munjel Alam, Advocates

... for the respondent Nos.8 aot 14

Affidavit of service filed by the petitioner is
taken on record.

The petitioner alleges inaction on the part of the panchayat authorities. According to the petitioner, there is a dilapidated construction on a Government road which hampers the petitioner's egress and ingress. The panchayat authorities submitted a report before the learned Sub-Divisional Executive Magistrate, in a proceeding under Section 144 of the Code of Criminal Procedure, to that effect. The panchayat authorities cannot abrogate its responsibility under Section 25(2) of the West Bengal Panchayat Act, 1973, by keeping quiet. The said provision of the Panchayat Act, 1973 casts a duty upon the panchayat authority to remove any encroachment from a public road/street, the control and management of which had been vested with the said authority.

The order passed in the proceedings under Section 144 of the Cr.P.C. indicates that both the Pradhan and Block Land and Land Reforms Officer had filed reports before the said Court. It was found that an old dilapidated house belonging to the respondent Nos.8 to 14, had encroached the government road. The condition of the house was such that the same could pose as a danger to all.

Further, it was found that the petitioner was facing trouble in accessing his own house, due to the said construction.

Learned advocate for the petitioner seeks direction upon the panchayat authorities to take steps in terms of Section 25(2) of the Panchayat Act.

Mr. Lahiri, learned advocate appearing on behalf of the respondent Nos.8 to 14 vehemently opposes the prayer of the petitioner.

According to Mr. Lahiri, the order passed by the learned Sub-Divisional Executive Magistrate under Section 144 of the Cr.P.C. cannot be implemented by a Writ Court. The petitioner had not approached the appropriate authority under the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962, seeking removal of the alleged encroachment from public land.

According to Mr. Lahiri, when the law provides a procedure to be followed for removal of

encroachment from government land and such power has been vested upon the Collector of the district to take steps in terms of the provision of said Act, 1962, the panchayat authorities cannot be directed to proceed for removal of such encroachment under Section 25(2) of the West Bengal Panchayat Act, 1973.

Mr. Lahiri further submits that the petitioner has a separate access and as such there is no reason for this Court to interfere with the alleged encroachment on government land.

Heard the parties. First of all, the order of the learned Sub-Divisional Executive Magistrate under Section 144 of the Cr.P.C. was passed by a competent Court. There are findings of encroachment on a government road. The local authorities have also reported of such encroachment. The gram panchayat is empowered by law to take steps if the said authority has control over such public street. The said power is not in derogation to any other mode of removal of any unauthorized encroachment from a public road under any other statute. However, the only bar towards exercise of such power would be if the panchayat authorities do not have control over such public street/road.

Thus, this Court is of the view that the remedy of the petitioner would be to approach panchayat authorities for necessary action under Section 25(2) of the West Bengal Panchayat Act, 1973. If the panchayat authorities are of the opinion that they do not have control over such road, the authorities will intimate the same to the petitioner within a period of two weeks from the date receipt of the petitioner's representation. Thereafter, the petitioner shall proceed in accordance with the applicable laws.

If the panchayat authorities have control over such public road and/or Government road, they shall take steps in terms of Section 25(2) of the West Bengal Panchayat Act, 1973. Such exercise will be completed within a period of two months from receipt of the petitioner's representation. The parties will be heard. A reasoned order shall be passed and communicated.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)