

Court No. 19

WPA 8896 of 2023

08.05.2023

(A 23)

(S. Banerjee)

Bilwapada Maity & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Ujjal Roy

Mr. M. Maity

Mr. D. K. Pal

... for the petitioners

Mr. Lalit Mohan Mahata

Mr. Prasanta Behari Mahata

... for the State

Despite service, none appears on behalf of the respondent Nos. 7 to 14. Affidavit-of-service is taken on record.

The petitioners allege that the respondent nos. 7 to 14 encroached a portion of the land situated at plot nos. 1445 and 1446 of Mouza Banskhana Jaipai, and prevailed upon the Panchayat authorities to sanction a scheme for construction of a concrete road through the said encroached portion.

The petitioners submit that the Panchayat authorities did not have any right to use the petitioners' land for construction of a road over a private land, which has been classified as 'kala'.

Paragraph 4 of the writ petition indicates that the allegation is primarily against the respondent nos. 7 to

14. It also appears that with regard to the alleged forcible occupation of the land of the petitioners by the respondent nos. 7 to 14 and their attempts to construct a village road, Title Suit No. 557 of 2015 had been filed by the petitioner before the learned Civil Judge (Sr. Division) at Haldia. A Commission was also held. According to the petitioners, very recently, the Panchayat authorities had decided to construct the concrete road during the pendency of the suit, at the instigation of the respondent nos. 7 to 14 and a scheme had been adopted for the purpose.

The records do not reveal that there had been overt act by the Panchayat authorities with regard to construction of the road over the land which is subject matter of the suit. The allegations are against the respondent nos. 7 to 14. It also does not appear that after the Commission was held, there was any finding with regard to the allegations made by the petitioners about the alleged occupation of the said lands by the respondent nos. 7 to 14 for the purpose of making a village road with the support of the gram panchayat. The petitioners have not been successful in obtaining any preventive or protective orders in respect of the land in question. Thus, the allegation that the Panchayat authorities had started construction of a concrete road at the instigation of the respondent nos. 7 to 14, can be raised before the learned civil court and the learned civil

court can pass necessary orders in accordance with law, upon hearing all the parties and upon holding a local inspection, if necessary, on the basis of an application to be filed by the petitioners.

The petitioners are, however, at liberty to approach the concerned Gram Panchayat for an answer as to their query as to whether any scheme had been undertaken by the Gram Panchayat to construct a road over that portion of Dag No. 1445 and 1446 at Mouza Banskhana Jalpai, which is the subject-matter of the civil suit. Such information shall be given to the petitioners within a week from the date of receipt of the petitioner's query. On the basis of the information given, the petitioner shall be at liberty to take further steps in accordance with law. The allegations made in this writ petition shall also be available to the petitioners at that stage, depending on the information to be supplied. However, private dispute with regard to title, possession and dispossession, cannot be decided by the writ court.

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 the server copy of this order.

(Shampa Sarkar, J.)