

02.05.2023
Sl. No.10(DL)
srm

W.P.A. No. 9255 of 2023

Malati Das & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Jayanta Kumar Pain

....for the Petitioners.

Mr. Jahar Lal De,
Mr. Rudranil De

...for the State-respondents.

Affidavit-of-service is taken on record. The postal articles containing the copy of the writ petition, which was attempted to be served upon the respondent Nos.6 to 8, have come back with the endorsement 'Refused'.

The writ petition is taken up in the absence of the said respondents.

The petitioners allege that a land situated at the southern part of Dag No.399 of mouza Madhubati was being used by the petitioners and their family members for ingress and egress to the dwelling house. The petitioners submit that not only the petitioners but other persons in the locality were also using the said land, as a passage.

Reliance has been placed on a deed of the erstwhile '*Zaminder*' in which the said land had been kept apart for use as a pathway by the villagers.

The representations made by the petitioner No.2 to the Basubati Gram Panchayat, Hooghly, indicate that there are allegations that the panchayat authorities did not take any steps to maintain the said pathway and when the petitioners tried to repair the same and clean up the bushes, the respondent Nos.6 to 8 raised objections, abused and intimidated the petitioners. The petitioner No.2 approached the panchayat authorities with a prayer for measurement of the passage and for proper repair and maintenance.

In the opinion of the Court, unless a village road or a public road is under the control and management of the gram panchayat, the panchayat authorities do not have any power to take steps for removal of any encroachment or for reconstruction and repair of such road. Without there being any evidences as to whether the said road had been considered as a pathway to be used by the villagers, it would not be proper for this Court to issue a mandamus upon the panchayat authorities. There appears to be a dispute with regard to the user of the alleged pathway between the petitioners and the respondent Nos.6 to 8.

The writ petition is disposed of with a direction upon the Basubeti Gram Panchayat, Hooghly, to cause an inspection of the southern side of Dag No.399 of mouza Madhubati, in the presence of the petitioners, the respondent Nos.6 to 8 and other eminent persons of the village, to ascertain whether the alleged pathway was considered or treated as a village road and whether the same was under the control and management of the gram panchayat.

If it is found that the said road is under the control and management of the gram panchayat and is used by the general public as per the declaration by the then '*Zaminder*', in that event, necessary steps shall be taken for maintenance of the same. However, if it appears to the panchayat authorities that dispute is between private parties with regard to the use and occupation of the land in question, the panchayat authorities shall not take further steps.

On the inspection and the findings arrived at, a reasoned order shall be passed and communicated to all. Necessary steps shall be taken on the basis of the findings.

The entire exercise shall be completed within a period of three months from the date of communication of this order.

A copy of the writ petition along with a server copy of this order be served upon the Secretary, Basubati Gram Panchayat, Hooghly.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)