

S/L 19
22.8.2023
Court No.14
SD

WPA 18152 of 2023

Sk. Azijul Molla & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Sujit Bhuniya
Mr. Debasis Dey

...for the Petitioner.

Mr. Rajarshi Basu
Mr. Sanjib Dutta

...for the State.

Mr. Susanta Pal
Mr. Prabir Kumar Ray

...for the Respondent Nos.7-9.

This is an application under Article 226 of the Constitution of India praying for direction upon the respondent authorities to remove the obstruction made by the private respondents so that the petitioners and other local villagers can perform their spiritual and religious activities in a peaceful manner.

Affidavit of service and supplementary affidavit of service filed in Court are taken on record.

Learned counsel appearing on behalf of the petitioners submits as follows. The private respondents encroached upon a pathway and portion of a landed property of a pirasthan. The petitioners along with other villagers filed an application under Section 133 of the Code before the Sub-Divisional Executive Magistrate, Egra, Purba Medinipur in Miscellaneous Case No.338 of 2019. On 31.01.2023, the learned Magistrate directed the BL&LRO and the Officer-in-Charge of Patashpur Police Station to remove the obstacles

from the common pathway and file report. In spite of this order, the BL&LRO and the police authorities have not taken any steps.

Learned counsel appearing on behalf of the private respondents submits as follows. The allegations made in the writ petition are denied. There is no portion of any common pathway that the private respondents have encroached upon.

Learned counsel appearing on behalf of the State submits as follows. Section 133 of the Code envisages a conditional order to be passed requiring the persons causing such obstruction or nuisance to remove the same. Only if he objects to do so, the errant individual has to appear before the learned Magistrate or any Executive Magistrate subordinate to him to show cause. There are provisions for penalizing the errant individual for not obeying an order or showing cause. In the present case, this procedure has not been strictly followed. Instead, the police and BL&LRO were directly asked to do the needful.

I have heard learned counsels appearing on behalf of the parties and have perused the writ petition filed by the petitioners.

It is the petitioners' case that the common pathway has been encroached upon by the private respondents.

However, the procedure followed by the learned Executive Magistrate in deciding an application under Section 133 of the Code has been questioned by the learned counsel for the State.

It does not appear that the petitioners have made out a case for this Court to grant police help in executing order passed by the learned Executive Magistrate.

Therefore, no further order need to be passed in this regard.

However, petitioners shall be at liberty to bring these aspects to the notice of the learned Executive Magistrate or to pray for appropriate modification before a superior court.

In the meantime, the police authorities shall maintain a strict vigil at the locale and ensure that no breach of peace takes place.

With these observations, WPA 18152 of 2023 is disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Jay Sengupta, J.)