

Item No.4
12.05.2023
Court. No. 19
GB

WPA 19891 of 2022

Shribas Dey
Vs
The State of West Bengal & Ors.

*Mr. Satyam Mukherjee,
Mrs. Sayani Ahmed*

...for the Petitioner.

*Mr. Dwarika Nath Mukherjee,
Mr. Janardan Mandal*

...for the State.

Affidavit-of-service filed in Court today, be kept with the record.

It appears from the statement of instructions prepared by the Sub-Divisional Officer, Barasat Sadar dated December 6, 2022, that the subject road was in existence since 2002. Initially a 7 feet wide 'kaccha' road had been constructed on Plot No.860 of Mouza-Mohishamachlandapur. The plot measures around 11 decimals. Around 8 decimals have been recorded in the name of the petitioner. Since 2002 no one objected to the construction of the road. Between 2010 to 2012, the road was converted to a double brick road as per the resolution of the gram panchayat. No one raised any objection even then.

Sometime in 2021 the road was converted to a concrete one, on the demand of the local people and the work was executed under the Annual Action Plan. When the petitioner complained, the work was near completion. According to the authorities, until 2021 -22, the petitioner did not raise any objection.

The fact that the road existed from 2022, is not in dispute. The same had been converted to a cemented road in 2021-22 and the petitioner objected for the first time. The petitioner has not been able to show any document indicating that he had raised any objection prior to 2022.

The learned advocate for the petitioner submits that he had raised an objection sometime in 2022 and had indicated that even the brick road had not been constructed with his consent.

In terms of Section 44 of the West Bengal Panchayat Act, 1973, private land of a person could only be used after obtaining a 'No Objection' from the owner, or upon acquiring the said land and upon payment of compensation.

The writ petition is disposed of granting liberty to the petitioner to approach the gram panchayat for a resolution, so that the road which had been constructed long time ago may remain, but some kind of compensation or cost be paid to the petitioner for utilization of his land. The area shall be identified upon demarcation and measurement of the land. If it is found that some portion or the entire portion of the land recorded in the name of the petitioner had been utilized, payment will have to be made by taking the approximate land value of 2002 as the applicable rate. The road had been constructed in 2002 for the villagers and was under the control of the authorities. The same was cemented in 2022 when the petitioner protested. The petitioner is unable to show any evidence of any protest or dissatisfaction to the construction of such road, before 2022.

The Block Land and Land Reforms Officer shall deploy a person from his office to take the measurement and demarcate the petitioner's land, in presence of all the parties. A report shall be prepared and handed over to the parties. Thereafter, the gram panchayat shall take into consideration the modalities by which the matter can be resolved and the Sub-Divisional Officer, Barasat Sadar shall monitor and supervise the entire process. A reasoned order shall be passed and communicated to the petitioner, by the gram panchayat. The entire exercise shall be completed within two months from the date of receipt of the petitioner's representation. If the allegations are incorrect then the reasoned order shall disclose the grounds on the basis of which the claim of the petitioner could not be accepted.

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.)