

05
11.12.2023
AGM

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A. 21509 of 2023

**Shyam Sel & Power Limited & Ors.
-versus
The State of West Bengal & Ors.**

**Mr. Surajit Nath Mitra, Sr. Adv.
Mr. Saptansu Basu, Sr. Adv.
Mr. Arindam Banerjee,
Ms. Shivangi Thard,
Mr. Subhrojyoti Mukherjee.
...For the Petitioners.**

**Mr. Santanu Mitra,
Mr. Sirsanya Bandopadhyay,
Mr. Arka Kumar Nag,
Mr. Gangaprasad Mukherjee.
...For the State.**

**Mr. Souma Subhra Ray.
...For the Respondent
Nos. 19 to 22 and 25.**

**Mr. Debanjan Mukherjee,
Mr. Apurba Kumar Datta,
Ms. Sreemoyee Mukherjee,
Mr. Shuvajit Bose.
...For the Respondent
Nos.10 to 18.**

**Mr. Saptorshi Banerjee,
Mr. Kuntal Banerjee.
...For the Respondent No.29.**

**Ms. Amrita Pandey.
...For the Respondent No.30.**

**Mr. Sounak Bhattacharya,
Mr. Sounak Mandal.
...For the Municipality.**

The dispute in the instant writ petition revolves around a portion of land at JL no 51, Plot No. 471 recorded as 'path'. The name of the petitioner no.1 has been recorded as raiyat in respect of the said plot of land.

Report filed before this Court by the official respondent mentions that the path/road was not in existence for a considerable period of time.

One of the mass representations filed by the villagers annexed to the exception filed by the respondent nos. 10 to 18 also mentions that the road is not in a useable condition.

The private respondents filed a Public Interest Litigation being WPA (P) 274 of 2022 (Iswar Pal & Ors. -Vs- The State of West Bengal & Ors.) alleging that the village road is not being maintained by the Paschim Burdwan Zilla Parishad.

The Hon'ble Court vide order dated 8th August, 2022, on the submission made by the learned advocate representing the State, directed the issue to be looked into by the Zilla Parishad.

As the writ petitioners herein were not parties to the Public Interest Litigation, no opportunity of hearing was granted to them. The Sabhadhipati, Paschim Bardhaman Zilla Parishad heard the matter and passed order on 24th February, 2023 clearly mentioning that the said land is a raiyati land but it has been recorded for augmenting public purpose. Though there was existence of a kaccha road at one point of time, but the same is not being used at present.

The Sabhadhipati was of the opinion that the road needs to be opened for public purpose for removing encroachment. The Sabhadhipati noted that the road is under control, supervision and administrative jurisdiction of the Asansol Municipal Corporation and there is no access of the Gram

Panchayat/Panchayat Samity or the Zilla Parishad over the said land.

The Sabhadhipati directed the Sub Divisional Officer, Asansol to take up the issue with the Asansol Municipal Corporation and to cause removal of the encroachment with the aid of the mayor of the Corporation.

A second Public Interest Litigation was filed seeking implementation of the order passed by the Sabhadhipati of the Zilla Parishad being WPA (P) 346 of 2023. In the said Public Interest Litigation the present writ petitioners sought to intervene claiming themselves to be owners of the land in question.

The Court vide order dated 1st August, 2023 directed the authorities to implement the direction as the said direction was passed upon hearing all the parties. The Court recorded that the bonafide of the petitioners cannot be examined as the earlier order worked itself out and culminated in the order of the Zilla Parishad.

The Hon'ble Division Bench directed the concerned Sub Divisional Officer, Asansol to implement the order of the Zilla Parishad. The Court, however, recorded that the order of the Zilla Parishad may be subject to challenge at the time of implementation.

The present writ petition has been filed challenging implementation of the order passed by the Zilla Parishad. The Sub Divisional Magistrate, Asansol Sadar, in compliance of the direction passed by the Hon'ble Division Bench in the Public Interest Litigation, directed the Commissioner, Asansol Municipal Commission to form a team to execute the order for removal of the illegal encroachment of the public road.

Be it recorded that the order passed by the PIL Bench on 1st August, 2023 was clarified by the Court on 8th August, 2023 by recording that all the parties,

except the intervenor that is the writ petitioners herein, were heard and the Zilla Parishad passed order on 24th February, 2023.

The issue right now is to ascertain as to whether the land, which is recorded as path, is actually used by the public.

There are contrary submissions being made by the parties. None disputes that the petitioners are the recorded owners of the subject plot. The dispute is only with regard to the use of the said land by the public.

The Court is of the opinion that the writ Court will not be the appropriate forum to decide as to whether the land was at all used by the public or not. There are enough evidences on record to suggest that the land is not being used by the public for nearly 20-25 years. The writ petitioners, being the owners of the land intend to use the same for expansion of their business.

It has been submitted by the writ petitioners that there is an alternate road, it is being used by the public at present.

Admittedly, the land does not fall either within the jurisdiction of the Gram Panchayat or the Panchayat Samity or the Zilla Parishad.

The report of the Block Land and Land Reforms Officer, Jamuria signed on 17th November, 2023 annexing the copy of the report of the Revenue Inspector, Jamuria clearly mentions that there is no physical existence of the public road at present. It also records about the alternate road that is being used by the public for communication purpose.

Though the aforesaid fact has been controverted by the private respondents by filing an exception to the said report but the issue cannot be decided in the instant writ petition.

The Sabhadhipati has clearly mentioned in his order that the land in question does not fall within the jurisdiction of the Zilla Parishad. That being so, the Sabhadhipati could not have taken a decision for passing direction in connection with a land over which the Sabhadhipati did not have any jurisdiction. Order passed by an authority which lacks jurisdiction is a nullity.

In view of the above, the impugned order of the Sub Divisional Magistrate, Asansol Sadar, Paschim Bardhaman dated 23rd August, 2023 by which the order of the Sabhadhipati has been sought to be implemented is directed to be kept in abeyance till there is a specific finding from a competent forum with regard to the use of the disputed land.

It will be open for the parties to approach the appropriate forum for relief.

No further order is required to be passed in the instant writ petition.

The exceptions filed by the respondent nos. 10 to 18 and 29 are retained with the records.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)