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AN
RP

24.04.2023
Ct. No. 01

WPA (P) 491 of 2022

Laxmipur, Birnagar Anchal Nagorik Adhikar
Raksha Committee & anr.

Vs.

The State of West Bengal & Ors.

Mr. Kamlesh Bhattacharya
Md. Yusuf Ali

... For the Petitioners

Mr. Sauvik Nandy
Ms. Sabita Roy

... For respondent 11-14

Mr. Lalit Mohan Mahata
Mr. Supratim Dhar

... For the State

1. We have heard the learned advocates for the parties.

2. By way of this Public Interest Litigation, the petitioners seek for a direction upon the respondents to construct an underpass or underground subway in the level crossing of Chamagram Railway Station on R.S. Plot No.173, L.R. Plot No.89, R.S. Khatian No.2, L.R. Khatian No.1929, Mouza-Laxmipur, J.L. No.36, Block-Kaliachak-III, District-Malda. The stand taken by the railway administration is that there was no existing railway crossing in the said area and if at all the same has to be constructed, fund has to be sanctioned by the State Government. This issue came up before this Court on an earlier occasion where a writ petition, being W.P.A.(P) 40 of 20222 was filed wherein a direction was issued on the District Magistrate to hold a joint meeting with the railway authorities and the representatives of the petitioners' association and after

elaborate discussion a reasoned order has been passed on 26.03.2022 which reads as follows.

“The case is taken up today for disposal. BL&LRO, Kaliachak-III has submitted the report vide his memo no. 132/BL&LRO/KCK-III dated 17.03.2022.

As per report it appears that RS Plot No. 173 corresponding LR Plot No. 89 of Mouza-Laxmipur, J.L. No. 36 with an area of 2.48 acres is recorded in favour of Uttar Paschim Simanta Raildaftar in LR Khatian No. 1929 with the classification Rasta. Whereas it appears that in the writ the instant applicant/Committee has mentioned RS Plot No. 634 corresponding LR Plot No. 618 of mouza-Lazmipur, J.L.No. 36 under block-Kaliachak-III as the spot of road crossing the railway track near Chamagram.

The existing road which crosses the railway track & is used by the local residents are of the above plot. Physically the width of the road crossing the railway track is 17.37 meters/57 feet. There used to be a railway crossing with a controlling guard in the past. On spot it is found that the railway authority has blocked the crossing by erecting iron & concrete pillars.

It has been mentioned in report of the BL&LRO that the road in RS Plot 173 and corresponding LR Plot No. 89 is the only road connecting to Chamagram High School, Simultala High Madrasa, South Malda College, Birnagar High School, Chamagram Rail Primary School, Chamagram S.P.Primary School, Khejuria Ghat BC Primary School, Hazi Kamruddintola Primary School, Simultala Primary School, Guljartola Primary School and Birnagar Managed Primary School. To the west of the railway track Chamagram High School is within 125 meters and by the side of the road. Above all this is only the connecting road to the national highway.

It is also mentioned in the report that about 400 feet land available between railway track in east and west direction on both sides along the road, the same also

reflected in the Land Acquisition Map.

Considering all facts and submission it is observed that the existing road width & length are suitable for construction of underpass and the land belongs to North Frontier Railway. Thus, the Divisional Railway Manager, Malda, Eastern Railway is directed conduct a survey within a period of three months with technical team and initiate the action for construction of underpass at Chamagram.”

3. On perusal of the above order, it is seen that the issue as to whether there was a railway crossing in existence or it is an unauthorized railway level crossing was examined in the presence of the senior officials of Eastern Railway. The finding has been rendered by the District Magistrate stating that there used to be a level crossing with the controlling guard in the past and on spot it is found that the railway authority has blocked the railway crossing by erecting iron and concrete pillars. Thus, as long as the order passed by the District Magistrate remains valid it is to be concluded that there used to be a railway crossing with the controlling guard in the said location. Therefore, two issues have to be complied with by the railway administration, firstly, the railway administration is directed to restore the railway crossing with controlling guard in the said location within a period of three months from the date of receipt of the server copy of this order and thereafter as directed by the District Magistrate that the Divisional Railway Manager, Malda, Eastern Railway shall conduct a survey of the area with technical team within a period of three months and initiate appropriate action for

consideration of construction of underpass at Chamagram Railway Station.

4. With the above directions, the writ petition stands **disposed of**.

(T. S. Sivagnanam)
Acting Chief Justice

(Hiranmay Bhattacharyya, J.)