

5.
14-12-2023
(Ct. no.06)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**MAT 2403 of 2023
+
IA NO:CAN/1/2023**

**Habib Ali & Ors.
Vs.
The State of West Bengal & Ors.**

Mr. Kishore Datta, Sr. Adv.,
Mr. Dibyendu Chatterjee,
Mr. Pritam Majumdar,
Mrs. Reshmi Ghosh,
Ms. Barnali Gantait,
Mr. Rahul Deb Goenka,
Mr. Mainak Singha Barma,
Ms. Satabdi Das

... For the Appellants.

Mr. Lalit Mohan Mahata, learned A.G.P.,
Mrs. Jhuma Chakraborty,
Mr. Ziaul Haque

... For the State.

Mr. Uttam Kumar Bhattacharyya
... For Respondent No.4.

Mr. Pratik Dhar, Sr. Adv.,
Mr. Pappu Adhikari,
Mr. Samir Halder,
Ms. Cardina Roy

... For Respondent No.6/Writ
Petitioner.

By consent of the parties, the appeal and the
connected application are taken up together for
hearing.

An order dated December 01, 2023 passed on
the writ petition of the respondent no.6 herein, being
WPA 20365 of 2023, is under challenge in this appeal
at the instance of the respondent nos.6 to 10 in the
writ petition. The order impugned is interim in nature

in the sense that the writ petition is still pending before the learned Single Judge.

It appears that the respondent/writ petitioner approached the learned Single Judge with the grievance that his representations made to the Purba Medinipur Zilla Parishad (in short 'Zilla Parishad') complaining that the respondent nos.6 to 10 in the writ petition have put up an iron gate on a plot recorded as 'Rasta', without the permission of the Zilla Parishad, were not receiving the attention of the Zilla Parishad. The writ petitioner further said that it was obstructing his access to his property.

The learned Judge called for an enquiry report from the Zilla Parishad. On the basis of an enquiry report dated October 12, 2023, signed by the Land Manager, Purba Medinipur Zilla Parishad, the Secretary of the Zilla Parishad filed a report in the form of affidavit affirmed on October 16, 2023, before the learned Single Judge. The learned Judge noticed from the report that the recorded owner of the concerned plot is the Zilla Parishad. The portion on which the iron gate has been constructed has not been leased out to anybody. The learned Judge passed the impugned order making the following observations:-

“ The private respondents are not inclined to take responsibility of removing the iron gate on the plea that the same was installed by obtaining the consent and decision of all the villagers.

Accordingly, the Purba Medinipur Zilla Parishad is directed to immediately remove the iron installation at the earliest and ensure that free movement of the general public and

vehicles over the public road is not hindered in any manner whatsoever.

The Inspector-in-Charge, Panskura Police Station is directed to render all necessary assistance to the men and agents of the Zilla Parishad at the time of removal of the iron installation.

Let a report along with updated photographs by the Zilla Parishad be placed before this Court on December 14, 2023 when the matter will appear in the list as "To be mentioned". "

Being aggrieved, the respondent nos.6 to 10 in the writ petition have come up by way of this appeal.

Mr. Datta, learned Senior Advocate, appearing for the appellants, says that disputed questions of facts are involved in this matter. The writ petition should not have been entertained. The fact, as per his instruction, is that the iron gate has been put up to safeguard a burial ground. The writ petitioner is in no manner inconvenienced by such iron gate. He has full access to his property. The iron gate was put up with the consent of all the villagers and in public interest.

Mr. Dhar, learned Senior Advocate, appearing for the respondent no.6/writ petitioner, says that his client does not have any other access to his property by vehicle. The only access by vehicle is through the road where the iron gate has been put up. The appellants and/or their associates are demanding money from the writ petitioner for allowing him to access his property by opening the iron gate.

The submissions made on behalf of the respective parties have been strongly disputed by the other party.

We are not concerned with any disputed questions of fact. Whether or not the writ petitioner is facing obstruction because of the iron gate, whether or not money is being demanded from him, whether or not the iron gate is necessary to protect the burial ground, etc., are not for the Writ Court to consider. These are indeed disputed questions of fact. The factual submissions made on behalf of the respective parties have not weighed with us at all. The Zilla Parishad at an appropriate time, if the occasion arises, may consider such issues.

What we are concerned with is that admittedly an iron gate has been put up on a public road, classified as 'Rasta', belonging to the Zilla Parishad, without the permission of the Zilla Parishad. Such an unauthorized construction cannot be permitted to remain. The learned Single Judge has done nothing improper by directing removal of such iron gate.

We affirm the order of the learned Single Judge. However, neither the order of the learned Single Judge nor this order will prevent the present appellants from making appropriate application before the Purba Medinipur Zilla Parishad seeking permission to put up an iron gate at the place where it has been presently put up. We clarify that first the Zilla Parishad shall comply with the learned Single Judge's order and within a fortnight thereafter, shall dispose of any application that the appellants herein may make, by a reasoned order, after affording an opportunity of hearing to any one of the appellants herein, the writ petitioner and/or their authorized representatives. However, this exercise will be done only after demolition of the iron gate in terms of the learned Single Judge's order. No citizen can take law into his

own hand and put up a structure on any land, far less public land, without obtaining necessary sanction from the Competent Authority.

We see no reason to interfere with the order under appeal. The appeal and the connected application are, accordingly, disposed of with the above liberty to the appellants.

Affidavits not having been called for, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(M. V. Muralidaran, J.) (Arijit Banerjee, J.)