

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***F.M.A. 601 of 2024
(CAN 1 of 2024)***

***Sri Dhirendra Nath Sil
-Vs-
State of West Bengal & Ors.***

For the Appellant : Ms. Suchishmita Ghosh, Adv.

For the State : Ms. Piyali Sengupta, Adv.

Respondent Nos.5 & 6 : Mr. Anant Kr. Shaw, Adv.,
Mr. Mainak Ganguly, Adv.

Respondent No.9 : Mr. Jayanta Kumar Das, Adv.,
Ms. Madhumanti Day, Adv.

Respondent Nos.10 to 14: Mr. Shibasis Chatterjee, Adv.

Heard on : 18.06.2024

Judgment on : 18.06.2024

Joymalya Bagchi, J. :-

1. Appellant is aggrieved by the impugned order dismissing the writ petition whereby he had prayed for removal of illegal construction encroaching the pucca municipal pathway adjacent to the appellant's land.
2. The gravamen of the appellant's case is a report of the BL&LRO at page 83A of the stay application which shows the road is 40 ft. wide.
3. Learned Advocate for the appellant contends on inspection it was noted the road is presently 12 ft. wide. This shows the pathway has been encroached upon. She further submits the road has been further encroached. Accordingly, she prays that the impugned order be set aside and municipality be directed to inspect the road and remove all illegal encroachments.
4. Vehemently disputing the submissions of the appellant, learned Advocates for the private respondents i.e. respondent nos. 9 and 10 to 14 respectively submit the appellant and respondent No.9 had severally submitted building plans wherein the road is shown as 12 ft. wide. There is no deviation from the plan sanctioned to respondent no.9.
5. Learned Advocate for the respondent Nos.10 to 14 contends their building is 40 years old and no illegal construction has been made therein or on the road.
6. In rebuttal, learned Advocate for the appellant submits his client's plan does not show the road as 12 ft. wide.

7. A municipal pathway running through the plots allotted to the appellant and private respondent No.9 by Refugee Rehabilitation Department is the bone of contention. The confusion arises on the score the pathway is shown as 40 ft. wide in the mouza map but on inspection municipality records the road as 12 ft. wide. The entire land belonged to Refugee Rehabilitation Department and the said Department had allotted plots to refugees including the appellant and private respondent. The municipal pathway ran through the said land. After allotment, it appears the width of the road stood reduced to 12 ft. Moreover, the inspection report submitted by the municipality states the sanction plan submitted by appellant and respondent no.9 also disclosed the width of the road as 12 ft.

8. In such state of affairs, learned Single Judge was of the view that there was no encroachment on the road and dismissed the writ petition. Ms. Ghosh strongly contends her client had not disclosed the width of the road in the sanction plan and no opportunity was given to him to take an exception to the report. Even if her contentions are accepted, it appears the municipality had sanctioned the plan submitted by respondent no.9 wherein the road was shown as 12 ft. wide. Municipality had accepted the plan as true and correct and sanctioned the construction. Since then building has come up and it is the contention of respondent no.9 there is no deviation from the sanctioned plan.

9. Similarly, it appears the building of respondent nos.10 to 14 is 40 years old. Nothing is placed on record to show there has been any recent illegal construction undertaken in the said building.

10. Under such circumstances, we are loath to accept the oral submissions of the learned Advocate that there have been further illegal encroachments on the municipal pathway and the same is presently even less than 12 ft wide.

11. Accordingly, I am not inclined to interfere with the impugned order.

12. We, however, observe that it shall be open to the municipality to ensure that the municipal pathway as it presently stands should be kept free from encumbrances and any illegal construction made thereon shall be forthwith removed.

13. With this observation, the appeal and the connected application being CAN 1 of 2024 are disposed of.

14. There shall be no order as to costs.

15. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

as

