

08.07.2024

Item No. 42

Ct. no.2

b.r.

WPA 9531 of 2024

Sri Bamapada Panda

Vs.

The State of West Bengal & Ors.

Mr. Kaustav Ch. Das

Mr. Sk. Sahjahan

.... For the Petitioner

Mr. Suman Ghosh

Ms. Munmun Tiwari

.... For the State.

Mr. Aditya Mondal

Mr. Purnendu Maity

... for the Resp. no.8.

Affidavit of service filed in Court today, is taken on record.

Mr. Kaustav Chandra Das, learned advocate appears for the petitioner.

Ms. Munmun Tiwari, learned State counsel appears for respondent nos. 1,2,4,5 and 7.

Mr. Aditya Mondal, learned advocate appears for the Prodhan of the concerned Gram Panchayat.

None appears for the private respondent no.9, despite notice. The law presumes that, the private respondent does not intend to oppose this writ petition.

The petitioner complains of an alleged unauthorized and illegal construction of a public road by allegedly encroaching upon a portion of petitioner's land. The

petitioner alleges that the public road was constructed at the behest of the Prodhan. The private respondent is the contractor, who constructed the road. The petitioner submitted a representation dated **March 26, 2022 at page 63** to the writ petition before the Prodhan of the concerned Gram Panchayat, the same has not yet been disposed of.

Learned counsel appearing for the Prodhan of the concerned Gram Panchayat submits that the project under which the public road was constructed is a project of the concerned Zilla Parishad and not of the Panchayhat. The portion of the land which already been vested in accordance with law with the State on such portion of the land, the road was constructed. Referring to the land revenue record at **page-17** to the writ petition, he submits that a portion of the subject land being Dag **No.3737** has been classified as **Smashan** which, cannot be a private property. The other properties are described in the land revenue record would show that the portion of land cannot be a private land.

Learned State counsel submits a report dated **July 7, 2024** issued under the seal and signature of the Inspector-in-Charge, Egra Police Station, is taken on record. The said report suggests on the basis of the opinion obtained from the relevant land department that the subject land is a vested land and not a private land and the character of the subject land also classified as

Smashan, then the road has been constructed under the scheme named as **Pathashree Scheme** by the concerned Zilla Parishad.

After considering the rival contentions of the parties and upon perusal of the materials on record, to sub-serve justice, the **respondent no.2** upon serving prior notice to the petitioner and the relevant Government officials of the relevant Government departments as he thinks fit and proper, through a delegatee to be delegated by the **respondent no.2** shall cause a physical inspection of the alleged unauthorised construction and then after affording an opportunity of hearing to the petitioner and any other interested parties and Government department whom the respondent no.2 shall think fit and proper shall consider the issue involved in the said representation dated **March 26, 2024, at page-63** to the writ petition and decide the said representation, as referred to above, by passing a reasoned order in accordance with law

The entire exercise as directed above shall be carried out by the **respondent no.2** within a period of **eight weeks** from the date of communication of this order. **The respondent no.2** then shall communicate its reasoned order to the petitioner and the other attending parties in the hearing within a further period of **two weeks** from the date of the said reasoned order to be passed.

It is needless to mention that the **respondent no.3** shall be present in the hearing and shall assist the respondent no.2 in every respect by producing all necessary records and documents.

It is made clear that, this Court has not gone into the merits of the rival contentions of the parties as recorded above. The respondent no.2 shall be at liberty to inspect the relevant land records by calling upon those from the relevant land department.

The petitioner and all the interested parties shall be at liberty to urge whatever points they wish to urge before the **respondent no.2** by relying upon whatever records and documents they wish to rely upon but the same shall not travel beyond the scope of the said representation dated **March 26, 2024** as referred to above.

Depending upon the decision of the respondent no.2, he shall be at liberty to take all necessary and consequential steps in accordance with law by applying his independent authority and discretion.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions this writ petition, **WPA 9531 of 2024** stands disposed of, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)