

March 27, 2024
Sl. No.A 60
Court No.19
s.biswas

CO 2036 of 2023

Vinayak Land Owners Pvt. Ltd.
vs.
Ram Gobind Rai & Sheo Gobind Rai
Transport Agency and others

Mr. Haradhan Banerjee
Mr. Partha Pratim Mukherjee
Mr. Nilmoni Das

... for the petitioner

1. There is no impediment to take up the matter in the absence of the opposite parties, as no caveat has been lodged.
2. This revisional application arises out of an order dated May 5, 2022 passed by the learned Civil Judge (Junior Division), 4th Court, Howrah.
3. By the order impugned, the learned court rejected an application under Section 151 of the Code of Civil Procedure, filed by the plaintiff. According to learned court, a similar prayer for installation of a gate was refused by the order dated December 6, 2021. Against the said order, the petitioner preferred a revisional application before the High Court, which was registered as CO 175 of 2022. The High Court had directed the court to re-consider the application, inter alia, holding that the advocate commissioner's report was required in order to bring on record the actual status of the A, B and C schedule property and to ascertain whether there were

alternative ways for ingress and egress of the defendants as admittedly, the defendants were in possession of the B schedule property.

4. This court finds that the question whether the installation of the gate would take away the easementary right of the defendants in respect of the B schedule property or not, was the moot question which was again directed to be decided by the learned trial judge upon considering the report of the learned commissioner.
5. The learned court, upon noting the order of the High Court, perused the commissioner's report from which it appeared that there was a common entrance for all the residents of A and B schedule property. Apart from that one entrance to A, B and C schedule property, there was no alternative entrance for access to the B schedule property. If the entry point was closed and a gate was installed, the right of easement of the defendants and other lawful occupants who resided in A schedule property would be denied. This was a factual finding of the learned court.
6. A conclusion was arrived at to the effect that installation of a gate at the main entrance of the Moulana Abul Kalam Azad Road would be adverse to the interest of the defendants and would close the entrance of all the lawful

occupants, except that of the petitioner/plaintiff.

The right of way of the other occupants would be hindered by such installation.

7. Moreover, on the basis of the order of High Court, the plaintiff was enjoying police picket. Thus, the apprehension of the plaintiff that by not securing the entrance to their property there was likelihood of damage was already taken care of by the order of police picket. If the plaintiff's contention was that the ad interim order of injunction had been violated, in that event, the plaintiff had other recourse to law.
8. Having considered the observations of the learned court and the commissioner's report, this court is of the view that the learned court had rightly held that the plaintiff should not be permitted to instal a gate at the entrance of the Moulana Abul Kalam Azad Road as there was only one entry point to A, B and C schedule property. Admittedly, the defendants were in possession of the B schedule property. The commissioner found only one point for ingress and egress to and from the A, B and C schedule property from Moulana Abul Kalam Azad Road. The learned court held that construction of the gate would hinder the right of way of the defendants. These findings of fact are based on

the learned commissioner's report and do not call for any interference.

9. Under such circumstances, the revisional application is disposed of without any interference.

10. All the parties are directed to act on the basis of the server copy of the order.

11. Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)