

23.05.2025
Sl. No. 18
Ct No. 3
SG

WPA 4662 of 2025

Reshmi Maulik & Ors.

Vs

The State of West Bengal & Ors.

Mr. Kallol Basu

Mr. Suman Banerjee

... ... for the petitioners

Mr. Koushik Roy

... ... for Khardah Municipality

Mr. Subrata Guha Biswas

Ms. Tanima Sengupta

... ... for the State

1. The petitioners in the present writ petition are aggrieved by the inaction of the respondent authorities, who have failed to implement the order dated 23.08.2024, passed by the Learned Executive Magistrate, Barrackpore, in M.P. Case No. 5078 of 2024.

2. The petitioners contend that respondent nos. 7 and 8 have encroached upon a 7-feet-wide common passage situated at the north-west corner of the plot comprising R.S. Plot No. 1152, Khatian No. 756, J.L. No. 4, Mouza-Patulia, District - North 24 Parganas. This illegal construction has obstructed the ingress and egress of the petitioners and other similarly situated individuals. Aggrieved thereby, the petitioners instituted M.P. Case No. 5078 of 2024 before the Executive Magistrate, Barrackpore. Upon

consideration of the status reports submitted by various agencies, the Executive Magistrate, by order dated 23.08.2024, held as follows:

“The 7-feet-wide common passage adjacent to R.S. Dag No. 1152, Mouza Patulia, J.L. No. 4, constructed by Khardah Municipality and used by the general public including the petitioners, shall continue to remain accessible for public use until legally dispossessed.”

Despite the aforementioned order, the respondent authorities have failed to take any action to remove the encroachment. Consequently, the petitioners have approached this Court by way of the present writ petition.

3. Learned Counsel appearing for respondent Khardah Municipality has submitted a compliance report in response to this Court’s order dated 28.04.2025. According to the report, a joint inspection was conducted on 15.05.2025 by the Municipal Engineer of Khardah Municipality along with representatives of the BL&LRO, Sodepur. The inspection revealed the existence of a 10-feet-wide common passage, at the end of which respondent nos. 7 and 8 have erected a boundary wall. It was further observed that on the opposite side of the said wall, a 5-feet-wide passage exists which connects to the

petitioners' residence. The common passage is maintained by Khardah Municipality.

4. This Court has heard the submissions made by the learned Counsel for the parties and has perused the records.

5. It is the statutory duty of the respondent Municipality to ensure that public streets remain free from encroachment. In the instant case, there is a categorical finding by the Executive Magistrate that the 7-feet-wide common passage was constructed by the respondent Municipality for the unhindered use and enjoyment of the general public. Even the compliance report submitted by the Municipality acknowledges that respondent nos. 7 and 8 have encroached upon this public passage, thereby causing substantial inconvenience to the petitioners and the public at large. Despite such acknowledgment, the respondent authorities have failed to initiate appropriate legal action.

6. Accordingly, this Court issues the following directions:

i. The respondent authorities shall take immediate and effective steps to remove the encroachment from the said common passage within a period of four (4)

weeks from the date of this order and ensure that the passage remains accessible to the general public.

ii. It is further directed that, if necessary, the respondent Municipality shall seek assistance from the local police authorities for the implementation of this order, and such assistance shall be rendered promptly.

7. With the above directions, the writ petition stands disposed of.

8. Since no affidavits have been filed by the respondents, the allegations made in the writ petition shall not be deemed to have been admitted.

9. There shall be no order as to costs.

10. Let urgent Photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

11. The petitioners are at liberty to communicate the said order to the respondent authorities, although learned Counsel for the respondents is present in the Court and the said order is passed in presence of the learned Counsel for the respondents.

12. All concerned parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Gaurang Kanth, J.)