

25.04.2025
DL-1
Ali
ct. no.24

WPA 5404 of 2018

**Saktipada Manna & Anr.
Vs.
The State of West Bengal & Ors.**

Mr. Debasish Das
..... for the petitioners.

Mr. Uttam Kr. Bhattgacharyya
....for the respondent No.8.

Mr. Swapan Kr. Dutta, AGP,
MR. Pradyot Kr. Das
.....for the State.

Petitioners purchased some portions of Plot No. 117 and Plot No. 117/1183 of land within Mouza-Purba Mukundapur under P.S. Contai, Dist.-Purba Medinipur by dint of two different registered sale Deeds dated 09.10.2007 and 23.04.2014. After their purchase they duly mutated their name in the record of rights. They also prayed for conversion of the land from "Jal to Bastu". On their prayer, the concerned authority has allowed the conversion on 14th of September, 2015.

It is the case of the petitioners that one of the co-sharers of those plot of lands gifted 167/1000 Dec. of land in favour of the State of West Bengal for the purpose of construction of public waiting room.

It is the case of the petitioners that the State of West Bengal has constructed the public waiting room

in the year 2018 beyond the area which was gifted to the State authority.

It is the contentions of the petitioners that no process of requisition or acquisition was initiated but the State respondent directly encroached the portion of the property of the petitioners.

It is the positive case of the petitioners that the State authority cannot construct the Pacca waiting room over the plot No. 117 without following the proper procedure for requisition and acquisition. By which the petitioners' right to get compensation was denied; hence this writ.

Learned counsel for the petitioner further submits that in terms of the direction of this Court during the pendency of the writ petition, the concerned authority in presence of the petitioners has conducted survey over the plot and a hand sketch was prepared. He submits that it appears from the survey that the said public waiting room was constructed beyond the area which was gifted to the State authority.

Learned counsel argued on that score, the case of the petitioners has been successfully proved. He submits that by virtues of the provisions of Section 131 of the West Bengal Panchayat Act, the concerned authority is required to encroach the land by giving the proper compensation to the petitioners.

Learned counsel for the petitioners further submits that at the right side of the plot No. 117 there is concrete public road which was constructed much prior to the construction of public room; the excess physical land of plot No. 117 was lying in the said concrete public room.

Learned counsel for the petitioners further submits that by construction of such public waiting room the State authority had actually blocked the ingress and egress of the petitioners from their portion of land to the PWD road.

Learned counsel for the petitioners further submits that the State authority has not properly demarked the portion of land of petitioners in plot no. 117 which was converted to "Jal to Bastu".

Learned counsel for the respondent Nos. 1-7 initially submitted the different reports thereafter, finally they used affidavit-in-opposition against the writ petition.

It is firm contentions of the State respondents that State never encroached any portion of the land of the petitioners, they have specifically submitted that the public waiting room was constructed over non-converted area of plot No. 117.

Mr. Swapan Kr. Dutta, learned senior counsel appearing on behalf of the State respondent has

placed the relevant portion of affidavit-in-opposition and submits that after through survey in terms of the direction of this Court it appears that the plot No. 117 having an actual access area then the area mentioned in the record; the excess land physically appearing belong to the other co-sharer.

It is the firm contentions of the learned senior counsel for the State that the portion of the petitioners land was actually converted. The State respondent never constructed any public waiting room over the converted area. Thus, the claim of the petitioners is illegal in the eye of law. He submits that the report as well as the sketch map has appended along with the opposition, wherefrom it would be revealed that no portion of land of the present petitioner were encroached by the State respondent in constructing the public waiting room.

Learned counsel for the respondent No. 8 submits that there is no merit in the case of the petitioners. Moreover, as per provisions of Section 131 of the West Bengal Panchayat Act, if it is required or appears to the Panchayat Samiti that a land is required to be acquired for the purpose of public goods, they can approach the concerned collector for acquisition of the land. He submits that this is the sole domain of the Panchayat Samiti the present petitioner

by filing the writ petition cannot claim any such right for acquisition.

In reply, the learned counsel for the petitioners submits that the sketch map as well as the report of the State authority sufficiently proved that they have constructed the public waiting room beyond the area of the land which was gifted to them. Thus, in this case, the State authority may be directed to initiate a proceeding for acquisition of the land so that the co-sharers (including petitioners) over plot No. 117 may get the sufficient compensation.

Having heard the learned counsel for the parties and also considering the pleadings; it appears that the petitioners are the purchaser over plot No. 117 and plot No. 117/1183 plot of land. Total area of plot No. 117 is 3.00 dec. through the Deed dated 09.10.2007 the petitioners have purchased 4/5 dec. of land plot No. 117 and by dint of registered Deed dated 23.04.2014, the petitioners have purchased 3/4 dec. of land of plot No. 117; in total the plot No. they have their joint right over the plot No. 117 of area of $1\frac{1}{10}$ dec. of land. It is a fact that there are other co-sharers of plot No. 117 amongst them one of the co-sharers, namely, Ananta Mondal gifted 167/1000 dec. of land in favour of the State of West Bengal for construction of public waiting room.

It appears that at the time of conversion the petitioners are allowed to convert 2.00 dec. of land in plot No. 117 so on arithmetic calculation the portion of land converted in favour of the petitioner is excess to their right over plot No. 117.

It is the firm contentions of the State respondent by making affidavit that they have never encroached any plot of land of petitioners over plot No. 117. But, it is further contentions of the State respondent that they have constructed the public waiting room beyond the area which was gifted to them but it is over the excess plot of land which not belong to any of the co-sharers. The said joint property is not partitioned by mets and bounds.

On plain perusal of the entire case; it appears to me that the petitioners, the State of West Bengal and other owners of plot No. 117 and plot No. 117/1183 are the co-shares of the joint property. Whether the State of West Bengal as a co-shares, encroach any excess portion of any co-sharers is the question before this Court. This writ Court cannot determine the place of encroachment by any co-shares over a plot of land because it is a disputed question of fact. If the State of West Bengal has encroached any portion of land of the petitioners, that can only be determined by competent Civil Court. Furthermore, it appears to me that the

State of West Bengal has positively denied the contentions of the petitioners regarding encroachment of any portion of the land possessed by the petitioners.

The submission of the learned counsel for the petitioners regarding the encroachment of the passage of the petitioners is fall under the right of easement of petitioners which can be very well established by the order of a Civil Court.

Thus, at this juncture, this disputed question of fact cannot be entertained by a writ court.

Under the above observations, I find no justification to entertain that the present disputes between the co-shares of plot No. 117 in writ jurisdiction. Petitioners may approach the Civil Court for desire relief.

I make it clear that if it has been proved by an order/decreed of Civil Court that the State of West Bengal has encroached any portion of land beyond that was gifted to the State of West Bengal, the concerned authority must have to initiate a proceeding for acquisition of land according to the law.

Under the above observations, the instant writ petition being WPA 5404 of 2018 is disposed of.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)