

HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction Appellate Side

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 20223 of 2024

**Mohan Ghara & Anr.
Versus
State of West Bengal & Ors.**

For the petitioners	:	Mr. Biswajit De Mr. Subhajit De
For the State-respondent	:	Mr. Soumitra Bandyopadhyay Mr. Subhasis Bandyopadhyay
For the respondent no. 4	:	Mr. Uttam Kumar Bhattacharyya
Heard on	:	12.11.2025, 24.11.2025, 25.11.2025 and 26.11.2025
Judgement on	:	26.11.2025

Hiranmay Bhattacharyya, J.:

1. Affidavit of service filed in Court today, is taken on record.
2. In spite of service, the private respondents are not represented.

3. Leave is granted to the learned advocate appearing for the petitioners to add the Superintendent of Police, Purba Medinipur as a party-respondent in this writ petition.

4. The petitioners claim to be the owners of plot nos. 2058 and 2125 within Mouza Mahatpur under Police Station – Panskura in the district of Purba Medinipur. The petitioners filed a suit being Title Suit No. 157 of 1996 before the learned Civil Judge (Jr. Division), Tamluk, for declaration, permanent injunction with an alternative prayer for mandatory injunction as the aforesaid plots were claimed to have been utilized for the purpose of construction of a road. The suit was dismissed on contest by a judgment and decree dated April 29, 2006.

5. Challenging the said judgment and decree, the petitioners have preferred a Title Appeal being no. 58 of 2006 and the Additional District Judge, Fast Track 2nd Court at Tamluk by a judgment and decree dated September 30, 2013 allowed the title appeal thereby setting aside the judgment and decree passed in Title Suit No. 157 of 1996. The appellate court passed a decree for mandatory injunction directing removal of the pathway which was already constructed on the aforesaid plots of land within the time limit indicated in the said decree.

6. Petitioners alleges that the Block Development Officer, Panskura – I submitted a proposal for construction of the road over the decreetal

property and to take forcible possession of the property by constructing a road. Petitioners further alleges that without serving a notice upon the petitioners and the proforma respondents, the work of construction of the road on the aforesaid plots of land of the petitioners, was completed. The petitioners approached this court praying for issuance of a Writ of Mandamus directing the respondent authorities to remove the road unauthorizedly constructed on the aforesaid plots belonging to the petitioners and to restore it to its original condition.

7. Pursuant to the direction passed by this court, the Block Land and Land Reforms Officer and the Purba Medinipur Zilla Parishad filed their respective reports. A report has also been filed by the BDO, Panskura – I dated August 22, 2024.

8. Mr. Bandyopadhyay, learned Senior Government Advocate submits that the inhabitants of the locality submitted a representation and complaint before various authorities including the District Magistrate, praying for construction of a concrete road from Mahatpur Shitalamandir to NH 6 as the existing road is in a very poor condition. He submits that pursuant to the aforesaid complaints made by the inhabitants of the locality, the concerned Zilla Parishad submitted a proposal for construction of the road and the West Bengal State Rural Development Agency has given administrative approval to Purba Medinipur Zilla Parishad, the executing agency, to construct 2-

kilometer concrete road from Mahatpur Shibmandir to Mahatpur Primary School. Mr. Bandyopadhyay submits that the construction of the road was made for improvement of the infrastructural facilities of the locality.

9. Learned advocate appearing for the Zilla Parishad submits that the work-order was issued by the Zilla Parishad but the entire work was done under the supervision of the concerned BDO.

10. Mr. Bandyopadhyay disputes the aforesaid submission of the learned advocate appearing for the Zilla Parishad and submits that the entire work was done under the supervision of the Zilla Parishad and not the BDO.

11. Heard the learned advocate for the respective parties and perused the materials placed.

12. Record reveals that the civil court of competent jurisdiction passed a decree for mandatory injunction directing removal of the pathway which was constructed on the plots of land of the petitioners being plot nos. 2058 and 2125.

13. In the said suit the State, represented by the Collector, Purba Medinipur as well as the BDO, Panskura – I, were party defendants. They were also party-respondents in Title Appeal No. 58 of 2006. The

said decree has attained finality as it is not the case of any of the parties that the said decree was challenged before any superior forum.

14. Thus, the State respondents cannot raise a dispute as to the right, title, interest and possession of the petitioners in respect of the aforesaid plots of land.

15. The Zilla Parishad in its report in the form of an affidavit has specifically stated that the road has been constructed in public interest and proper demarcation shall be undertaken by the competent authorities and if it is found that any portion of the road had inadvertently been encroached upon the rayati land of the petitioner, appropriate corrective measures, including shifting or alignment of the road shall be considered in accordance with law. learned advocate appearing for the Zilla Parishad would contend that the road was constructed as in the Record of Rights in the 'Remarks' column as against the said plot it was recorded that the plot is for use of the public in general.

16. Though there is a presumption of correctness as to the entries made in the finally published Record of Rights but such presumption is a rebuttable one. The civil court after considering the rights of the petitioners passed a decree of mandatory injunction directing the respondents, including the BDO and the State through the Collector, Purba Medinipur to remove the pathway constructed on the property

of the petitioners. The said decree is binding upon the respondent authorities and they cannot now take a stand that the petitioners has lost title in the aforesaid plot merely because of an entry in the Record of Rights (ROR). The classification of the plot has been recorded as 'Path', i.e., road. However, the said plot is still recorded in the name of the petitioner.

17. It is not the case of the respondent authorities that any proceeding for requisition or acquisition of the property of the petitioners for construction of the road was initiated. Without initiating any proceeding for requisition or acquisition, the property of the petitioners could not have been utilized for the purpose of construction of road.

18. From the documents disclosed in the report of the concerned BDO, it is evident that administrative approval for construction of concrete road from Mahatpur Primary School to Sheetala Mandir was given vide Memo dated January 16, 2024.

19. The learned advocate appearing for the State would contend that the petitioners ought to have put the decree passed by the civil court into execution. After going through the materials on record this court finds that the cause of action for filing the writ petition is the action taken to construct a concrete road over the property of the petitioners after the decree passed by the civil court. For such reason this court is

not inclined to accept the contention of Mr. Bandyopadhyay that the writ petition is not maintainable.

20. In view of the reasons as stated hereinbefore, the writ petition is disposed of with the following direction:

- i) The Block Land and Land Reforms Officer, Panskura-I, being the respondent no. 8, shall demarcate the property of the petitioners being plot nos. 2058 and 2125 within Mouza Mahatpur under Police Station – Tamluk in the district of Purba Medinipur by deputing competent Amins/surveyors for such purpose and to prepare a sketch map demarcating the property of the petitioners indicating whether in any portion of the said plots there is existence of any concrete road.
- ii) The entire work of demarcation shall be carried out upon prior service of notice to the petitioners, the Zilla Parishad and the BDO, Panskura-I. Petitioners and the aforesaid authorities shall be authorized to depute their authorized representatives at the time of such demarcation. It will be also open to the petitioners to depute any of the competent surveyor at the time of such demarcation.

- iii) The report of demarcation, including sketch map, shall be supplied to the petitioners, the Zilla Parishad and the BDO, Panskura-I.
- iv) The aforesaid exercise shall be completed by the respondent no. 8 within a period of six weeks from the date of receipt of a server copy of this order.
- v) If upon demarcation of the said property it is found that the aforesaid plots of the petitioners have been utilized for construction of any road, concrete or otherwise, steps for removal of such construction shall be taken by the Purba Medinipur Zilla Parishad and the BDO, Panskura-I shall render all assistance and cooperation at the time of such removal of construction of the road and shall restore the plots in question to its original condition. Such exercise shall be completed as expeditiously as possible but positively within a period of four weeks from the date of completion of the demarcation by the BL&LRO.
- vi) The Officer in Charge of Panskura Police Station shall render all assistance to the aforesaid authorities at the time of demarcation as well as the removal of the construction of the road, if any.

- vii) It will be open to the Officer in Charge of Panskura Police Station to requisition additional police force from the Superintendent of Police, Purba Medinipur, if the occasion so arises and the Superintendent of Police shall take steps in accordance with law.

(Hiranmay Bhattacharyya, J.)