

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Supratim Bhattacharya

MAT 1671 of 2025
With
CAN 1 of 2025

Abdul Hai and Ors.
Vs.
The State of West Bengal and Ors.

For the appellants : Mr. Swarup Paul,
Md. Nauroz Rahber,
Muhammad Jawwad,
Mr. Guru Saday Dutta, Advs.

For the private
respondent no. 10 : Mr. B. N. Ray,
Ms. Shetparna Ray, Advs.

For the State : Mr. Suman Sengupta,
Mr. Suman Dey, Advs.

Heard on : November 18, 2025.

Judgment on : November 18, 2025.

Sabyasachi Bhattacharyya, J.:

1. The present appeal has been preferred purportedly by certain
local villagers against an order passed by the learned Single

Judge, whereby two writ petitions were disposed of simultaneously. One of the writ petitions, bearing W.P.A. No. 11772 of 2024, was filed by one Subhendu Dubey, who is represented before us as one of the respondents in the appeal (respondent no. 10). The other writ petition was filed by the present appellants. The genesis of both the writ petitions was an order dated June 18, 2024 passed by the District Magistrate and Collector, Uttar Dinajpur, Karnajora.

2. The said Subhendu Dubey had previously moved the writ court complaining that the representation given by the said Subhendu Dubey was not being decided by the District Magistrate. The said Subhendu Dubey's name was recorded as the owner of the disputed plots of land. Initially, there were bargadars on the said land, against whom eviction was obtained by Subhendu Dubey. However, despite the same, the said orders in favour of Subhendu Dubey were not being implemented, giving rise to the representation by him to the District Magistrate.
3. The writ court, initially by an order of a learned Single Judge and thereafter by a Division Bench, directed the District

Magistrate to dispose of the representation, ultimately resulting in the order dated June 18, 2024.

4. The District Magistrate, in the said order, relied on reports which were called for from one DMDC and the B.L. & L.R.O. concerned. On scrutiny of the reports, the District Magistrate held, *inter alia*, that there was an earthen pathway on the concerned plots, which was being used by the villagers since long.
5. However, the District Magistrate also observed that, contrary to the apprehension of Subhendu Dubey, there was no plan on the part of the governmental authorities to take up any construction of metal road over the concerned plots of land.
6. It was recorded by the District Magistrate that as per the report of the B.L. & L.R.O., the plots in question were recorded in the name of the petitioner i.e. Subhendu Dubey.
7. The present appellants preferred the writ petition by claiming that it was the incumbent duty of the government authorities to sanction a scheme for taking steps to construct a metal road over the plots in question.
8. On the other hand, Subhendu Dubey preferred his writ petition complaining of the observations and findings in the District

Magistrate's order to the effect that there exists a pathway which was being used by the villagers for long.

9. During the pendency of the writ petitions, the present appellants had taken out an application for addition of party in Subhendu Dubey's writ petition, which was dismissed by a learned Single Judge. Such order of dismissal, according to learned counsel for Subhendu Dubey, was never challenged by the present appellants before any appellate court. However, learned counsel for the appellants submits that since the appellants' writ petition was also taken up and clubbed together for hearing with Subhendu Dubey's writ petition, no further appeal was preferred against the refusal to add the appellants as a party to Subhendu Dubey's writ petition.
10. By the impugned order, the learned Single Judge arrived at several conclusions. *Inter alia*, it was observed that no proof was produced from the end of the appellant,s that is, alleged local villagers of Uttar Rampur village, to establish that there exists an earthen pathway across the disputed plots of land and/or that they have any easement rights over the said property. In the same breath, the learned Single Judge observed that the respondent no. 4/authority practically

admitted the right, title, interest and settled possession of the said Subhendu Dubey in respect of the LR plots in question.

11. While holding so, the learned Single Judge relied on a report filed by the local police authorities which was initially filed before the District Magistrate, from which it transpired that certain miscreants had dumped mud over the plots of land of Subhendu Dubey for the purpose of using the same as a path.
12. On such premise, the learned Single Judge directed the removal of such mud. Not stopping there, the learned Single Judge observed that the cost of such removal has to be recovered from the present appellants i.e. the local villagers.
13. The learned Single Judge further observed that the present appellants had approached the writ court for exercising high prerogative writ jurisdiction on a flimsy ground, having no right, title and interest over the property of the writ petitioner Subhendu Dubey in W.P.A. No. 23065 of 2024, for which the writ court imposed cost of Rs.5 lakh each upon the present appellants. Half of the same was to be paid to Subhendu Dubey and the remaining portion was to be deposited to the office of the State Legal Services Authority.

14. Upon a careful consideration of the contentions of the parties and the materials on record, we find that the rights of Subhendu Dubey as owner of the plots in question have been fairly established from the Records of Rights and other relevant materials. In fact, the observation of the District Magistrate that there is an earthen pathway over the said plots cannot have any conclusive bearing, since the District Magistrate is not a civil court and the findings of the District Magistrate in that regard on the basis of the B.L. & L.R.O.'s report cannot have any adverse effect on the legal rights of Subhendu Dubey which the said Subhendu Dubey otherwise has in law.
15. However, insofar as the findings of the learned Single Judge in the impugned order regarding the lack of easement rights or other rights in respect of the plots of the present appellants are concerned, we cannot but observe that it is beyond the jurisdiction of the writ court to come to any conclusive finding as to whether a person or a group of persons has or has not any right of easement. Declaration of such right comes squarely within the domain of a competent civil court which,

only upon taking evidence on a full-fledged trial, can decide such issue conclusively.

16. As such, we hereby observe that the findings arrived at by the learned Single Judge in the impugned order regarding the lack of easementary rights of the present appellants are not conclusive and/or binding on any of the parties and it will be open to the present appellants to approach a competent civil court for canvassing such rights, if any, before such court. If such an approach is made, the appellants shall not be prejudiced in any manner by any of the observations made in the order impugned herein and it will be open to the competent court so approached to decide such issue on merits independently.
17. Also, as a natural corollary to the above observation of ours, the imposition of costs of Rs.5 lakh per head on each of the local villagers, who are the present appellants, is disproportionate and not commensurate with the rights claimed by the said appellants. In any event, imposition of such a huge and prohibitory cost would deter villagers, who otherwise hail from marginalized sections of the Society, from seeking their legal remedies before a court of law.

18. That apart, since we have already held that the writ court could not conclusively come to any finding as to whether the appellants had or had not easement rights or other right, title or interest in the subject property without affording opportunity of adducing evidence befitting a civil trial, such findings of the writ court could not be the premise of imposition of costs on the appellants merely for filing the writ petition.
19. We could still have understood if the learned Single Judge had observed that the writ petition was frivolous since the reliefs sought against the State authorities pertained to a matter of policy. However, the premise of the imposition of costs was solely that the appellants, having no right, title and interest over the property of the writ petitioner, preferred the writ petition, which was beyond the domain of the writ court to decide.
20. Accordingly, MAT 1671 of 2025 along with CAN 1 of 2025 are disposed of in the light of the above observations, thereby setting aside the portion of the impugned judgment of the learned Single Judge dated September 16, 2025 passed in W.P.A. No. 23065 of 2024 and W.P.A. No. 24582 of 2024, whereby the cost of removal of mud was directed to be

recovered from the present appellants. Instead, the cost of removal of such mud shall be borne by the law enforcement agencies of the State, which failed to give protection to Subhendu Dubey from such mud being deposited in the first place. It is expected that such mud shall be removed at the earliest.

21. Moreover, we set aside the cost of Rs.5 lakh each upon the present appellants i.e. the writ petitioners in W.P.A. No. 24582 of 2024, as directed to be paid in the impugned order.
22. However, it is made clear that the rest of the order is not interfered with on merits.
23. There will be no order as to costs.
24. The parties shall act on the server copy of this order, duly downloaded from the official website of this court.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)