

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

W.P.A. 24620 of 2024

Sarif Sekh

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Muhammad Obaid

For the State : Mr. Lalit Mohan Mahata, AGP
Mr. Ziaul Haque

**For the private respondent Nos.
11 to 14** : Ms. Manali Biswas
Mr. Mrinal Saha

Heard on : 01/12/2025

Judgment on : 01/12/2025

Hiranmay Bhattacharyya , J. :

1. In this application under Article 226 of the Constitution of India the petitioner has prayed for issuance of a writ of mandamus commanding the respondent authorities to take steps against the respondent Nos.11 to 14 for encroaching upon the government land and for making illegal construction on the said government

land and to remove the illegal and unauthorised construction already made by rendering necessary police assistance.

2. The petitioner claims to be the owner of 0.14 decimal of *Aman* land in respect of R.S. and L.R. Plot No.2269 and 0.99 decimal of *Ayush* land in respect of R.S. and L.R. Plot No.2279 along with some other land within Mouza-Tarakpore, J.L. No.78 under Police Station-Berhampore in the District of Murshidabad.
3. The petitioner claims to be in physical possession of the land upon construction of two storied brick built house on Plot No.2269. The petitioner further states that in the front side of Plot No.2269 is the government land which is used as *Nayanjuli* and the same leads to *Bhakuri-Hariharpara* PWD road and the said strip of land is used for ingress and egress to and from the PWD land to the land of the petitioner at Plot No.2269. The petitioner alleges that the private respondent Nos.11 to 14 have made illegal construction on the PWD road.
4. The petitioner claims to have submitted a representation before the various authorities including the District Magistrate, Murshidabad and the Executive Engineer, Public Works (Roads) Division. Alleging inaction on the part of the authorities, the petitioner has approached this Court.
5. The learned advocate representing the respondent Nos.11 to 14 submits that the petitioner filed a suit being Title Suit No.154 of 2023 before the learned Civil Judge (Jr. Div.), 2nd Court at Berhampore, District-Murshidabad for selfsame reliefs. She

submits that an ad interim order of *status quo* was passed in the said suit at the instance of the petitioner which has been extended from time to time. She further submits that in the said suit an advocate Commissioner was appointed for holding local inspection, who after holding local inspection submitted a report stating that there is no construction activity going on at the property which is the subject matter of the civil suit.

6. Affidavit of service filed in Court today is taken on record.
7. In spite of service none appears for the State.
8. Mr. Mahata, learned Additional Government Pleader, who usually represents the State, is present in Court today and is requested to appear in this matter along with a junior of his choice.
9. Let the appointment of Mr. Mahata along with a junior of his choice be regularised by the competent authority.
10. A copy of the writ petition has already been served upon Mr. Mahata, learned Additional Government Pleader in Court today.
11. A copy of the plaint of Title Suit No.154 of 2023 has been produced before this Court by the learned advocate for the private respondents, which is taken on record.
12. After going through the plaint of the said suit, this Court finds that the petitioner herein filed a suit being Title Suit No.154 of 2023 for declaration that the plaintiff/petitioner herein has right of road frontage over 'B' schedule suit property, to have an access to the said public road and for permanent injunction restraining the principal defendants/respondent Nos.11 to 14 herein from

making any construction over the 'B' schedule suit land and from encroaching the 'A' schedule land as well as obstructing the road frontage of the plaintiff which is the access to the public road and for mandatory injunction directing the principal defendants/respondent Nos.11 to 14 to remove the illegal construction made by the respondent Nos.11 to 14 herein over the 'B' schedule suit land.

13. R.S. and L.R. Plot No.2269 forms part of the 'A' schedule of the plaint. R.S. Plot Nos.3379, 2316 and 2806 forms part of the schedule 'B'. A sketch map has been appended to the plaint describing the position of Plot Nos.2279, 2269, 3379 2316 and 2806. From the sketch map appended to the plaint it appears that it is the case of the petitioner/plaintiff that the Plot No.3379 is situated just adjacent to the southern side of Plot Nos.2279 and 2269 and to the further south of Plot No.3379, Plot No.2806 is situated which is described as the *Bhakuri-Hariharpara* Metal Road.
14. The petitioner has claimed his right of access to the PWD road i.e. R.S. Plot NO.2806 and has prayed for a decree for permanent injunction restraining the respondent Nos.11 to 14 herein from making any construction over the 'B' schedule suit land i.e. R.S. Plot No.2806 which is described as the *Bhakuri-Hariharpara* Metal Road and from encroaching upon the 'A' schedule land obstructing the road frontage of the plaintiff/petitioner herein.

15. On a bare reading of the averments made in the plaint together with the reliefs claimed therein, this Court is of the considered view that the petitioner filed Title Suit No.154 of 2023 for the reliefs which are more or less identical to the reliefs claimed in this writ petition. The suit being earlier in point of time and a much more comprehensive relief has been claimed by the petitioner in the civil suit, which is pending before a Civil Court of competent jurisdiction, this Court is not inclined to entertain this application under Article 226 of the Constitution of India.
16. The learned advocate appearing for the petitioner would contend that an order of injunction is in subsistence and the private respondents cannot make any construction in violation of the order of injunction passed by the civil court.
17. In case the petitioner alleges any violation of the order of injunction passed by the civil court, it would be open to the petitioner to take appropriate steps in accordance with law.
18. With the above observations WPA 24620 of 2024 stands disposed of.
19. There will be no order as to costs.
20. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)