
(2022) 02 CAL CK 0030

In the Calcutta High Court

Case No : MAT No. 1163 Of 2021, CAN No. 1, 2, 3 Of 2021

Swapan Kumar Sahoo & Ors.

APPELLANT

Vs

Probodh Kumar Pramanik & Ors.

RESPONDENT

Date of Decision : 10-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 12, 226

Citation : (2022) 02 CAL CK 0030

Hon'ble Judges : Prakash Shrivastava, CJ;Rajarshi Bharadwaj, J

Bench : Division Bench

Advocate : Supratic Roy, Sudipta Roy, Amit Dey, Shamik Chatterjee, Aditya Bikram Mahata, Prabhat Srivastava

Final Decision : Dismissed

Judgement

Rajarshi Bharadwaj, J

1. By this appeal, correctness of the order of the learned Single judge dated March 6, 2019 passed in W.P.A. No. 25920 of 2018 (Shri Probodh

Kumar Pramanik & Ors. Versus -The Union of India & Ors.) has been questioned by the writ petitioner who by an order of injunction

restrained the respondents from constructing any road or develop the existing road on plot no. 167 in any manner whatsoever.

2. The writ petitioner/respondent herein had filed a writ petition W.P. No. 25920 (W) of 2018 under article 226 of the Constitution of India objecting to

the widening of road by the concerned authorities. The facts of this case are that there exists an 18- feet wide panchayat moram road which is in poor

shape as it was constructed three/four decades ago. The dilapidated road caused difficulties for the families who reside in the said village. Thus, the

concerned authorities took charge under the scheme of Pradhan Mantri Sarak

Yojana to widen and develop the road.

3. The Writ Petitioner/ Appellant objected to the widening of the road on the pretext that his land shall be encroached if the road is widened and

developed by the local authorities. Neglecting his objection, the authorities in charge i.e., the Khanamohan Gram Panchayat and the Debra Panchayat

Samiti had instructed the contractor to carry out repairing and widening work of the existing road since the condition of the road had become

miserable and the entire village road had already been widened and repaired except about the 150 meters of road where the land is owned by the

present writ petitioner.

4. The learned Single judge after hearing the learned counsel for the parties and perusal of the records, observed that an authority within the

meaning of Article 12 of the Constitution of India is not entitled to encroach upon, construct or develop any land belonging to any private party without

the due process of law. Moreover, if an authority has to construct or develop any existing road, it either has to acquire it or purchase it. In the

instant case, neither did the authorities comply with the due process of law by acquiring the said private property nor did it purchase the land and there

is no denying of the fact that the land is owned by the petitioners. The learned Single judge held that in such circumstances, none of the respondents

would make any constructions on the plots described at pages 22 and 27 of the application. In case there are any construction on such plots, the

petitioners were at liberty to remove the same.

5. Submission of the appellants is that the learned Single Judge has failed to take into consideration that the public at large cannot be made to suffer

due to inappropriate steps taken by the respondent authorities and that public rights should be given preference over the rights of a particular individual

and the same submission is adopted by the respondent authorities.

6. An authority within the meaning of Article 12 of the Constitution of India is not entitled to encroach upon, construct or develop any land belonging to

any private party without the due process of law. As stated correctly by the learned Single Judge, if an authority has to construct or develop any

existing road, it either has to acquire it or purchase it. In the present case, neither did the authorities comply with the due process of law by acquiring

the said private property nor did it purchase the road. In such a scenario, the

contention of the appellants that the public rights should be given

preference over the rights of a particular individual, does not hold good and the contention of the appellants that the public at large cannot be made to

suffer due to inappropriate steps taken by the respondent authorities is not applicable in the instant case. Thus, no case is made out to interfere in the

order of the learned Single Judge.

7. For the foregoing reasons, the appeal is found to be devoid of any merit which is accordingly dismissed.