

Subrata Bhowmik And Ors Vs State Of West Bengal And Ors

Court: Calcutta High Court (Appellate Side)

Date of Decision: Jan. 16, 2025

Hon'ble Judges: T.S. Sivagnanam, CJ; Hiranmay Bhattacharyya, J

Bench: Division Bench

Advocate: Arka Bhattacharya, G. Ghosh, Sk. Md. Galib, Priyamvada Singh, Piyush Chaturbedi, Haridas Das, Mukul Lahiri, Anish Chakraborty

Final Decision: Disposed Of

Judgement

1. By way of this public interest litigation the petitioners allege that there is an obstruction to a road which prevents the free movement towards the

main road i.e. Jossor Road at Vivekananda More under Kolaghat Development Block.

2. The two private respondents have been impleaded, 9th respondent is a resident of a housing complex where the petitioner resides and 10th

respondent is owner of a property adjoining a drainage channel. Annexure P-1 is the photograph which shows a tea stall on the road margin and

there is also a channel over which the bamboo sticks have been laid so that people can walk over the channel.

3. Thus, on the petitioners own saying there is no road in the place in question, but there is a channel.

4. Therefore, the authority should ensure that the channel is not blocked so that there is free flow of water during the rainy season thereby the interest

of the residents of the area be protected. So far as the tea shop which is seen in the photograph, the owner of the tea stall has not been impleaded as

a respondent.

5. The learned Government counsel placed reliance on the decision of the Hon'ble Supreme Court in Jaipur Shahar Hindu Vikas Samiti v. State of

Rajasthan and Others in (2014) 5 SCC 530 to point out that when their interest can be protected and controversy or dispute can be adjudicated by a

mechanism created under a particular statute, the parties should be relegated to the appropriate forum instead of entertaining the writ petition filed as a

public interest writ petition.

6. It is further submitted that this decision was also followed by this court in the case of S.K. Israil v. State of West Bengal & Ors. in WPA(P) 79 of

2024 dated 29.2.2024.

7. In our considered view, the decision of the Hon'ble Supreme Court cannot apply to the facts and circumstances of the case as it is evident that

the tea stall is in a road margin.

8. Therefore, regardless of the fact that there is a representation or a writ petition the authorities concerned should ensure that there is no

encroachment on road margin or on government land or on public property. The authorities are not expected to wait for a direction from this court but

they are bound to protect the government property and if they failed to do so, then it will be construed as they are acting in breach of the public trust

doctrine.

9. So far as the order passed by this court in WPA(P) 79 of 2024, this court after taking note of the decision of the Hon'ble Supreme Court on

facts found that the Sub-Divisional Controller (F&S), Serampore, Hooghly had inquired into the matter and nothing adverse was found.

10. Therefore, the decision by this court is also distinguishable on facts.

11. Accordingly, we direct the 3rd respondent, namely, the Sub-Divisional Officer, Tamluk to conduct an inspection of the area and if it is found that

the tea shop has been erected in the road margin without any permission, necessary action be taken after notice to the tea shop owner.

12. During the course of the inspection the officers from the office of the Block Development Officer and the Block Land and Land Reforms Officer,

Kolaghat and the officers from the Public Works (Road), Tamluk Division shall also be present to examine as to whether there is a drainage channel

in existence and if there is any blockage, appropriate steps be taken to ensure that the channel is maintained in appropriate condition.

13. For the above observations and directions, the writ petition stands disposed of.

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