

ML 212
28.04.2023
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 6723 of 2022

**Mr. Narendranath Roy & Anr.
-versus
The State of West Bengal & Ors.**

**Mr. Saumyen Datta,
Mr. Ashutosh Mukherjee.
...For the Petitioners.**

**Ms. Mousumi Bhowal,
Mr. Aman Gupta.
...For the Municipality.**

The petitioners' prayer before the Municipality for repairing/constructing the 8 feet wide passage in front of C.S. Plot No.1166 at 5 and 6, Khudiram Sarani is pending consideration.

The petitioners submit that when the property was purchased in the year 1963, the passage was common but due to passage of time, the said lane has become public and it is used by everybody in general.

The Municipality has set up a pump over the said passage and the status of the passage as a private one is lost. The passage is required to be treated as a public passage and ought to be maintained by the Municipality.

It has been submitted that unauthorized shops have been set up on the said passage.

Learned advocate appearing for the Municipality submits, upon instructions that, the deed in respect of the said property specifies that the passage is common and the Municipality is not liable to maintain the same.

Though it appears from the documents that the passage is yet to be treated as a public passage, but as the said passage is used by the general public at present, accordingly, the Municipality ought to take a decision whether to treat the same as a municipal passage or not.

The Municipality ought not to have set up pump over a private passage. The fact that the passage is used by the Municipality for the interest of public, the same implies that the passage can no longer be treated as a private one. The Municipality can take a decision for treating the said passage as public and take steps for repairing/constructing the same.

The Municipality shall afford an opportunity of hearing to the necessary parties prior to taking a decision in the matter.

The decision taken by the Municipality shall be communicated to the petitioners.

The Municipality shall take steps in accordance with the observations made hereinabove at the earliest, but positively within a period of twelve weeks from the date of communication of this order.

Learned advocate appearing for the petitioners are directed to forward a copy of the representation dated 14th March, 2022 along with photographs to the Municipality for acting in compliance of the direction passed herein above.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)