

D/L- 5
17/04/2026
Ct. No.-19
Aritra

WPA 8699 of 2026

**Asaduzzaman
Vs.**

The State of West Bengal & Ors.

Md. Kutubddin

....for the petitioner

Mr. Moniruzzaman
Mr. Md. Yusuf Ali

....for the State

Mr. Manas Kumar Das
Mr. Prabal Das

....for the respondent No.12

Affidavit of service filed in Court today is taken on record.

The petitioner claims to be the owner of R.S. Plot No.579 corresponding to L.R. Plot No.648 within Mouza-Asalpur under Khargram Police Station in the District of Murshidabad.

The petitioner states that there is a PWD road namely, Kuli-Morgram road on plot No.576 within Mouza-Asalpur. Petitioner alleges that the private respondent raised a construction by encroaching upon a portion of the PWD road thereby causing obstruction to the ingress and egress of the petitioner from his property through the PWD road being plot No.576.

The learned advocate appearing for the petitioner submits that pursuant to complaint lodged by the petitioner, the Assistant Engineer, Public Works Department, Kandi Sub-Division issued a letter to the Officer-in-Charge, Khargram Police Station dated

December 11, 2012 directing the Officer-in-Charge, Khargram Police Station to take necessary steps so that unauthorised encroachment will be stopped immediately. He submits that thereafter the predecessor-in-interest of the private respondent stopped making further construction but after some time he again started making construction. He submits that in the meantime the predecessor-in-interest of the private respondent passed away and thereafter the private respondent started making unauthorised construction by encroaching upon the PWD road for which the petitioner was compelled to submit a complaint before the appropriate authority praying for removal of encroachment from the PWD road. He submits that in spite of receipt of such representation, no steps have been taken by the respondent authority till date.

The learned advocate appearing for the respondent No.12 submits that the respondent No.11 has passed away sometimes in the month of February, 2026. He further submits that the private respondent and the petitioner are co-owners in respect of plot No.579 and a partition suit between the petitioner and the private respondent is pending. He further submits that during subsistence of an order of *status quo*, the private respondent filed an application under Section 151 of the Code of Civil Procedure praying for permitting the private respondent to make construction and after such prayer is allowed, the private respondent has made construction on the plots, which is the subject matter of dispute in the partition suit.

The report of the Officer-in-Charge, Khargram Police Station dated April 15, 2026 is taken on record.

Heard the learned advocates for the respective parties and perused the materials placed.

In course of hearing of this writ petition, a copy of the plaint of Partition Suit No.3 of 2013 pending before the learned Civil Judge (Jr. Div.), Kandi has been produced by the learned advocate for the petitioner, which is taken on record.

On a bare perusal of the plaint it appears that the State of West Bengal represented by the Collector of the District of Murshidabad is the defendant No.3 in the said suit. The suit has been filed praying for declaration of title in respect of 'Ka' schedule property and for partition and for a further declaration that the petitioner has easementary right over the 'Kha' schedule property and for a permanent and mandatory injunction against the private respondent in respect of the construction on the 'Kha' schedule property.

R.S. Plot No.579 corresponding to L.R. Plot No.648 forms part of the 'Ka' schedule property and a portion of R.S. Plot No.576 forms part of the 'Kha' schedule property.

After going through the plaint of Partition Suit No.3 of 2013, this Court finds that the petitioner has approached the Civil Court claiming his right of access through the R.S. Plot No.576.

The petitioner has prayed for removal of encroachment from the PWD road being R.S. Plot No.576.

It appears that the petitioner has approached the Civil Court praying for mandatory injunction for removal of any construction upon R.S. Plot No.576 and for permanent injunction sometimes in the year 2013. The said suit is still pending.

After going through the plaint of Partition Suit No.3 of 2013 and the averments made in this writ petition, this Court is of the considered view that the property which is the subject matter of dispute in this writ petition forms part of the 'Kha' schedule of the partition suit.

Since the Civil Court is in seisin over the dispute between the petitioner and the private respondent in respect of plots including the portion of Plot No.576, this Court is not inclined to entertain this writ petition and the writ petition stands disposed of. The petitioner is left free to take steps in the partition suit for appropriate reliefs.

There will be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)