

Case No :WP(C) 0000499/2014

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Party Name : SMT. GITA PAUL Vs THE STATE OF TRIPURA

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THE HONBLE MR. JUSTICE S.TALAPATRA

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Heard Mr. K. Nath, learned counsel appearing for the petitioner as well as Ms. A. S. Lodh, learned Addl. G.A. appearing for the respondents No. 1, 2, 3, 4 and 6 and Mr. K.K. Pal, learned counsel appearing for the respondents No. 5 and 7. Mr. K. K. Pal, learned counsel has submitted that the respondent No.5 did not file any reply and would adopt the counter-affidavit filed by the respondents No. 1, 4 and 6. However, he has submitted that the respondent No.7 has filed the counter-affidavit. By means of this writ petition, the petitioner has challenged the legality of the order dated 02.03.2015 passed by the Deputy Collector and Magistrate, Agartala, Revenue Circle, by rejecting the prayer for diversion. The order has been passed by the competent authority in the proceeding drawn up under Section 20 of the TLR and LR Act. On 07.03.2011, the petitioner No.4 and others made an application under Section 20 of the TLR and LR Act seeking permission for diversion of a pond recorded in the revenue survey plots No.7603, 7604, 7605 and 7606, comprised in khatian No.5779 of Mouja Howrah sheet No.5-7 under Sadar West Tahashil Kachari. The inquiry, admittedly was carried out by the three agencies namely the Division Fire Service Officer, Health Officer of Agartala Municipal Corporation and Addl. Sub-Divisional Magistrate, Sadar. That apart, one Kanungo, namely Sri K.C. Das submitted his report having been directed by the Deputy Collector and Magistrate, Agartala Revenue Circle on 22.08.2012, part of Annexure P-10 to the writ petition.

Mr. K. Nath, learned counsel appearing for the petitioners has submitted that the impugned order passed by the Deputy Collector and Magistrate has been passed without taking the relevant materials in consideration and the survey reports filed by the various agencies. He has submitted that the Divisional Forest Officer has observed that 50% of the watery land may be allowed to divert under Section 20 of the TLR and LR Act by his report/provisional No- objection Certificate dated 31.01.2012, Annexure P-6 to the writ petition. Having made reference to the report in the memorandum dated 22.03.2012, Mr. Nath, learned counsel has further submitted that the water of that pond are not being used by the people from the locality and it is full of hyacinth. Even from the report it would appear that there is no access of the people from the locality to the pond, the watery land under reference. The report of the Kanungo, part of Annexure P-10, has observed as under:

"Through conversation with neighbouring residents of pukur, Swapan Roy, son of late Harendra Chandra Roy and Biswajit Das, son of Sri Ranjit Kr. Das, it is understood that, about two months ago there was no aquatic plant (hyacinth) in the pukur then local people used to bath in the pukur, but at present the local people cannot use the water. The stand of Himangshu Pal for the petitioners is, that, his mother has given the land among his brothers and sisters by dint of WILL. So, if the pukur is not filled up, partition could not be made. So today I have submitted the present report to your good office."

That apart Mr. Nath, learned counsel appearing for the petitioners has made generous use of report submitted by the Health Officer on 15.05.2012, part of Annexure P/5 to the writ petition, where he has categorically observed that hyacinth and other aquatic plants are floating at the upper surface of the water and on physical appearance, pond water is almost blackish in colour. He has observed in his report that there is one Government road at one side of the said pond. Mr. Nath, learned counsel therefore has contended that the impugned order has not taken consideration of these materials in their perspectives while considering the said application for diversion and the rejection is based on irrelevant consideration.

From the other side, Ms. A. S. Lodh, learned Addl. G.A. has submitted that in the locality there is no watery body available. In the event of fire breaking out in the locality, the fire columns would not get necessary water if the permission of diversion is granted. That apart, the water from this pond was being used by the local people. She has referred to the report dated 01.10.2011 of the Health Officer, Agartala Municipal Corporation, the respondent No.7, where it has been categorically observed that the water of the pond was clear and used by the neighbour. No public nuisance existed at that time and the water was necessary for locality. The said report dated 01.10.2011 is part of Annexure R-1 to the affidavit-in-opposition filed by the respondents No. 1 to 4 and 6.

However, Ms. A. S. Lodh, learned Addl. G.A. has submitted that the Divisional Fire Officer provisionally issued no objection certificate for 50% diversion of the watery land under Section 20 of the TLR and LR Act. But on overall consideration, the competent authority has rejected the prayer for diversion. Ms. A. S. Lodh, learned Addl. G.A. has finally submitted that after filing of the application for the diversion, the nature of the pond has substantially changed and the change has been deliberately made.

Mr. K. K. Pal, learned counsel has submitted that the report of the Health Officer was made on physical inspection and as such that cannot be brushed aside so casually. He has also admitted that the physical inspection was carried out by the Sanitary Inspector of Agartala Municipal Council and the said report is available at Annexure P-5 to the writ petition.

From the bare reading of the impugned order dated 02.03.2015, Annexure P-9 of the writ petition, it appears that the ground for rejecting the diversion is that the diversion is likely to cause 'public nuisance' and it is for the interest of the general public, diversion cannot be permitted.

On assessment of the materials those have been placed before this court, this court is of the opinion that the report/provisional No-objection Certificate filed by the Divisional Fire Officer dated 31.01.2012 (Annexure P/6 to the writ petition), the report filed by the Sanitary Inspector dated 15.05.2012 (part of Annexure P/5 to the writ petition), the report dated 22.08.2012 filed by Sri K.C. Das, Kanungo (part of Annexure P/10 to the writ petition) and the report dated 01.11.2014 submitted by the Addl. Sub-Divisional Magistrate, Sadar, West Tripura were not properly considered while passing the impugned order dated 02.03.2015. What kind of nuisance that would be generated had the diversion been allowed has also not been spelt out. As a result, the analogy for such rejection is not intelligible and it appears that the rejection has been made so mechanically that the relevant consideration was not there.

Having regard to these aspects as above, this court is of the view that the impugned order dated 02.03.2015 cannot be sustained and accordingly the same is set aside. However, this court cannot decide whether a pond can allowed to be diverted fully or partly or not all, in its jurisdiction under Article 226 of the Constitution of India. The competent authority shall take a reasonable approach and decide whether on the basis of the reports as referred above, the diversion can be granted or not. In this regard it is clarified that the reports submitted by the Divisional Forest Officer shall be given due weightage as it appears from the averments made by the respondents that there is apprehension as to the fire management in the locality. Since the application has already been made for the diversion, the competent authority, Deputy Collector shall re-appreciate all the materials including those reports as referred above and pass the appropriate order on such relevant consideration. The petitioner is granted further liberty to place other materials or the consolidated statement explaining or elucidating why their claim is reasonable and just to the Deputy Collector. If the petitioner is inclined to file such further consolidated statement to the Deputy Collector, they shall submit the said statement within 31.12.2015. Having received such statement, filed within 31.12.2015, their application under Section 20 of the TLR and LR Act shall be decided by the competent authority, the Deputy Collector within another 30(thirty) days i.e. by 31.01.2016. It is further observed that the pond is not a public pond, it is entirely a private property. While making that exercise, that aspect of the matter to be given due consideration and be juxtaposed with the public interest.

With this observation and direction this petition is allowed to the extent as indicated above.

There shall be no order as to costs.