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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 2867 of 2020
(Via Video Conference)

Mostafa Ahamed
Vs.
The State of West Bengal & Ors.

Mr. Sandeep Prosad Shaw,
Mr. Anupam Some,
Ms. Priyanka Gupta
... For the petitioner.

The advocate for the petitioner says that he has served the State respondents in terms of the order dated 3rd June, 2021. Neither the State respondents nor the private respondent are present. However, in view of the order I propose to pass, the matter can be taken up in the absence of the respondents. The petitioner is, therefor, allowed to proceed with the matter.

The petitioner claims to be the owner of a landed property measuring about 2.6 acres of tank in plot No.603, previously recorded in Khatian No.740 and presently recorded in L.R. Khatian No.570 and other Khatians vide Nos. 211/2, 438, 588, 1015 situate at Mouza –Ashokgram, JL No.164, P.S. Gangarampur, District – Dakshin Dinajpur (hereinafter referred to as the “said Tank”) along with his brother. The petitioner says that the Pradhan of Asokgram Panchayat No.11 at one point of time tried to lease out the

said Tank claiming it to be a Government property. The petitioner filed a suit, being Title Suit No.155 of 1980 before the Court of the learned Munsif at Balurghat. The said suit was decreed allowing permanent injunction against the defendants in the said suit. An appeal, being Title Appeal No.99 of 1983 was filed against such decree and judgment by one of the parties to the suit, which, according to the petitioner, was dismissed by the learned Assistant District Judge, Balurghat on 2nd August, 1985. Despite such appellate decree, the dispute regarding the said Tank persisted which as the petitioner says compelled the petitioner to file a writ petition, being WP 28696(W) of 2008 before this Court. The said writ petition was disposed of by an order dated 6th May, 2009 allowing the petitioner to file a representation before the Block Development Officer and disposal of such representation by a reasoned order within a time-frame after affording opportunity of hearing. The Block Development Officer, Gangarampur, Dakshin Dinajpur, passed an order on 27th August, 2009. Subsequently, another writ petition was filed by the petitioner, being WP 19696(W) of 2015, which was disposed of by an order dated 12th April, 2016. In terms of the said order dated 12th April, 2016, the Block Development Officer, Gangarampur Development Block, Dakshin Dinajpur, passed an order on 5th August, 2016 holding that Asokgram Panchayat under Gangarampur shall have no right to manage and/or lease out the tank/pond in question in LR plot No.603, being the

said Tank. The petitioner says that the private respondent, being the respondent no.4 alleging that the said Tank is a Government property is trying to interfere with the said Tank in an attempt to lease out the same. The petitioner had lodged a complaint with the Superintendent of Police, Dakshin Dinajpur, being the respondent no.3. The petitioner says that though the petitioner had requested the complaint to be treated as an FIR, no FIR has been registered as yet. No investigation in terms of the complaint has also been made.

So far as the right in respect of the said Tank is concerned, the police authorities may not be the proper authority to adjudicate such right. This adjudication is not required to be done by police authorities in view of the previous orders referred to hereinabove. The police authorities, however, are empowered under section 145 of the Code of Criminal Procedure, 1973 (in short, Cr.P.C.) to enquire into a complaint as the incident complained of is likely to cause a breach of peace concerning the land or water or the boundaries thereof. When a specific complaint was made as against the respondent no.4, the police authorities were duty bound to investigate into the matter and if any matter of substance as to the petitioner's allegation was found then the police authorities were required to take steps in accordance with law as laid down in section 145 of the Cr.P.C.

The respondent no.2, being the Inspector-in-Charge, Gangarampur Police Station is directed to enquire into the complaint made by the petitioner if not already done and take appropriate steps if the allegations of the petitioner are found to be correct as made in the complaint dated 6th February, 2020. The respondent No.2 shall also see that there is no breach of peace at the locale or in and around the Tank in question till the investigation is complete and the said respondent takes subsequent steps as permissible in law.

Nothing further remains to be adjudicated in the writ petition and the same is accordingly disposed of without any order as to costs.

Since I have not called for any affidavits, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties upon compliance with the necessary formalities.

(Arindam Mukherjee, J.)