

30.11.2021
Court No. 19
Item no.7
sn

WPA No. 16627 of 2021
(C.A.N. 1 of 2021)

Krishna Biswas Vs. The State of West
Bengal & Ors.
(via video conference)

Mr. Sabyasachi Chatterjee
Ms. Debolina Das

..for the petitioner

Mr. Narayan Chandra Bhattacharya
Mr. Syed Nasirul Hossain

..for the State

Mr. Suman Basu

..for the Chandernagore
Municipal Corporation

Mr. Sanjoy Kr. Sarkar

..for the added respondent

In re: **C.A.N. 1 of 2021**

C.A.N. 1 of 2021 is an application for addition of party. The said application has been filed by the owner/title holder of a water body, being Dag No.280 which is also the subject matter of litigation in this writ proceeding.

The applicant had originally lodged a complaint before the Chandernagore Municipal Corporation alleging unauthorized constructions by the petitioner. The Chandernagore Municipal Corporation had initiated a proceeding in respect of such complaint and passed an order of demolition. Pursuant to the direction of this Court dated September 30, 2019, the demolition order which was sought to be implemented.

This Court directed the Commissioner, Chandernagore Municipal Corporation to take steps on the basis of the letter written by the applicant. Pursuant to the order of this Court, by a notice dated September 20, 2021, the Commissioner, Chandernagore Municipal Corporation issued a notice to the petitioner as also the applicant informing them that an inspection will be held of the premises in question. Pursuant to the said notice, the Commissioner, Chandernagore Municipal Corporation informed the petitioner that the unauthorized structures should be removed. In the said notice, it was also indicated that in case the petitioner failed to remove the structures, then the same would be done by the Corporation with the assistance of the police authorities.

Such action of the Corporation has been challenged before this Court, in this writ petition.

As there are allegations against the petitioner of having made unauthorized constructions and the same have been detected by the Corporation on the basis of the complaint lodged by the applicant, this Court is of the opinion that the complainant must be added in this proceeding. A portion of the property over which she is also claiming title is involved in this litigation and the reports reveal that the unauthorized structure is over such portion. The

question of title or encroachment shall not be gone into in this proceeding, but the complainant who has alleged unauthorized construction is a proper party before this court.

Although it is the contention of Mr. Chatterjee that the presence of the applicant is not required, this Court is not in agreement with Mr. Chatterjee, inasmuch as, the proceeding was initiated on the basis of the objection raised by the applicant and the applicant has raised rival claim over Dag No.280, on which the unauthorized construction has been made.

The application is allowed.

Department is directed to take steps accordingly.

In re: **WPA 16627 of 2021**

The report has been filed by the Chandernagore Municipal Corporation as also the Block Land & Land Reforms Officer, Singur, Hooghly. The Assistant Engineer of Chandernagore Municipal Corporation upon making an inspection of the premises in question pursuant to the direction of this Court, has identified the unauthorized constructions. Such report is taken on record. The nature of unauthorized construction is quoted from the report:-

“unauthorized construction i.e. construction made without any sanctioned plans.

The said construction is made with the following details :-

i)Bamboo framed structure with plastic sheet shed.

ii)The floor of the said construction is concreted with plain cement concrete(PCC)

iii)The said unauthorized construction was made by filing a portion of the pond (water body) of Shanti Sarkar(Shaw) on the adjoining eastern side of the plot of Krishna Biswas by constructing a protracting pucca Guard wall on the pond.”

The petitioner was present before this Court on an earlier occasion and had undertaken to demolish the unauthorized portion. The same has not been done. However, it was the specific submission of the petitioner that there was no pond in existence as alleged. The Court was of the opinion that in view of the undertaking given by the petitioner, the problem could be resolved amicably and the petitioner was permitted to remove the structures. As there was a dispute with regard to the existence of the water body, the Court was of the opinion that the Block Land & Land Reforms Officer concerned should demarcate the water body from the bastu land. Now, it appears that the RS Plot No. 280 corresponding to L.R. Plot No. 498, Mouza Chandernagore, sheet no. 11, is classified as a ‘Pukur’. The recorded owner of R.S. Plot No. 280 is Bhanumati Pal wife of Haridas Pal. The added respondents claim to be the heirs of Bhanumati Pal. The R.S. map has been annexed to the report of the Block Land & Land Reforms Officer concerned, from which it appears that the Plot No. 280 is a Pukur, whereas Plot No. 281 is a bastu land.

It also appears from the report of the Corporation that the unauthorized construction has been made by filling up the water body. Corporation has also stated that commercial activities are being carried on from the unauthorized constructions.

Mr. Chatterjee, learned Advocate for the petitioner submits that the bamboo shed shall be removed by the petitioner but the concrete floor cannot be removed as civil suits are pending between the parties, over the area on which the structure has been constructed.

The allegations are that the petitioner has filled up the pond and demarcated the same by a guard wall and has constructed unauthorized structures. In my view, the floor of the structure is distinct and separat from the earth. There is no reason why the said structure, which has been built, should not be removed when the same is unauthorized. Moreover, the structure would include the floor and the shed. The shed is not independent of the cement floor. If the bamboo framed structure with plastic sheet shed and the floor on which such structure has been constructed are not removed within seven days from date, the Chandernagore Municipal Corporation shall demolish the above structure including the floor by requisitioning police help. The police authorities shall

assist the Corporation. The guard wall shall also be demolished.

With regard to the allegations of filling up the pond, the report is before this Court. The report of the BL&LRO states that R.S. Plot No. 280 is a pond and that has been illegally filled up. The mouza map, R.S. record of rights are also before this Court. Such report has been supplied to the petitioner.

The Commissioner, Chandernagore Municipal Corporation, who is the competent authority empowered under the West Bengal Inland Fisheries Act, 1984 shall initiate a proceeding with regard to the allegation filling up of the pond and dispose of the same by hearing the petitioner and the added respondent, who claim to be the recorded owner of R.S. Plot No. 280 and pass necessary orders in accordance with law thereby reaching the proceedings to its logical conclusion.

The State respondents are at liberty to initiate proceedings as permissible under the law against such illegal filling up of the pond under the relevant statutes.

The dispute with regard to the title in respect of the plot no. 281 and 280 are issues in two civil suits between the parties and shall not be affected in any way with the order of demolition as the subject

matters in said suits are for declaration of right, title, interest and eviction respectively.

This order is being passed exclusively with regard to the allegation of unauthorized construction on a water body but the question of title or encroachment has not been gone into.

This writ petition is disposed of.

There will be however no order as to costs.

Parties are directed to act on the server copy of this order.

(Shampa Sarkar, J.)