

2.
03-12-2021
debajyoti
(Ct. no.06)

MAT 699 of 2020
with
IA NO:CAN/1/2020

Shri Uday Karmakar & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Srijib Chakraborty,
Mr. Anindya Bose,
Mr. Asok Banerjee,
Mr. Diptendu Mondal,
Mr. Nikhil Gupta

... For the Appellants.

Mr. Subhabrata Datta,
Mr. Debashis Sarkar

... For the State.

Mr. Alok Kumar Ghosh,
Mr. Swapan Kumar Debnath

... For the K.M.C.

The appellants approached the learned Single Judge with the grievance that the Corporation has taken over their property and is maintaining the same as a pond. There seems to be some dispute as regards the nature of the land in question. A report of the BL&LRO, produced before us, says that the land is "*pukur*". The appellants say that the land is "*bastu*".

The appellants say that purportedly in exercise of power under Section 17A of the West Bengal Inland Fisheries Act, 1984, the Corporation has taken over the land. However, no notice was served on the appellants who are the owners of the land.

The learned Single Judge dismissed the writ application observing that the writ petitioners/appellants cannot obstruct the cleaning

up of the pond and the beautification of the area and construction of a public park thereat. It was further observed that the writ petitioners cannot claim any right in respect of the public property.

We have heard learned counsel for the parties. There appears to be factual disputes including as regards the nature of the land in question. It is not in dispute that the power was exercised by the authorities under Section 17A of the West Bengal Inland Fisheries Act, 1984. Section 18 of that Act provides for an appeal against any order of any competent authority passed under that Act. We are of the view that since such efficacious alternative remedy is available, the appellants should first exhaust that avenue before they can ask the writ court to interfere. It is settled law that when an alternative efficacious remedy is available to an aggrieved party, normally the writ court will not interfere. It is not that the writ court does not have the jurisdiction to interfere, but it will normally decline to exercise such power until such time that the aggrieved party has exhausted the alternative remedy.

We are also of the view that since there are factual disputes involved, an appeal would be a more appropriate remedy for the appellants. Accordingly, without going into the merits of the case, we permit the appellants to approach the appellate authority under the provisions of West Bengal Inland Fisheries Act, 1984 with their grievance. If such an appeal is filed within a fortnight from date, the appellate authority shall decide the same in accordance with law after giving an opportunity of hearing to all concerned parties without going into the question of time bar. It is made clear that if no such appeal is

filed within a fortnight from date, thereafter the appellate authority will not be obliged to entertain any appeal.

The order under appeal is set aside. All points are left open for the appellate authority to decide.

The appeal and all connected applications are disposed of.

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

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Kausik Chanda, J.) (Arijit Banerjee, J.)