

18.07.2022
Sl.No.2(SL)
srm

W.P.A. No. 4096 of 2021

Nibedan Pal & Ors.

Versus

The State of West Bengal & Ors.

Mr. Purnesish Gupta,
Mr. Jayanta Kumar Mukhopadhyay
... for the Petitioners.

Mrs. Chama Mookherji,
Ms. Paramita Pal
...for the State-respondents.

Mr. Suvadeep Sen
...for the Respondent Nos.4, 5 & 6.

Affidavit-of-service is taken on record.

The petitioners allege police inaction. According to the petitioners, the respondent Nos.4 to 6 were disturbing the pisciculture, which was being carried on by the petitioners, at Plot Nos.1740 and 1741, J.L. No.30, at Mouza Jorhat measuring more or less 27 and 49 decimals, respectively. According to the petitioners, the Pradhan, Panchpara Gram Panchayat had accorded such permission for pisciculture. The petitioners lodged a complaint and it is alleged that, despite receiving such complaint, the police authorities did not take any steps.

The police authorities were directed by this Court to file a report, upon causing an enquiry. Today, the police report has been filed.

Mr. Sen, learned Advocate appearing on behalf of the respondent Nos.4 to 6, submits that the records relied upon by the petitioners do not reflect that the names of the petitioners had been entered in the record of rights with regard to Plot No.1740. On the contrary, it is urged that Plot No.1740 is a pond, over which the said respondents have been washing clothes as they washermen by vocation, for more than 50 years. The said respondents have lodged a complaint before the police authorities, panchayat authorities as also other administrative authorities, alleging that the petitioners were trying to fill up the pond situated at Plot No.1740. According to Mr. Sen, the petitioners have not annexed any document, which would indicate that their names had been entered in the record of rights in respect of Plot No.1740. On the basis of the complaint lodged by the said respondents, Sankrail Police Station Case No.906 of 2020 had been registered.

The police report is taken on record. It appears that the contention of Mr. Sen about his clients being washermen and having been washing clothes on Plot

No.1740 was correct. However, apprehending breach of peace, the police authorities had submitted proceedings under Section 107 of the Code of Criminal Procedure on several occasions against the respondent Nos.4 to 6 and two others. On the basis of the direction of the learned Executive Magistrate, 2nd Court at Howrah, an enquiry was made and a report was filed before the learned Court below. It has been indicated in the report that a civil suit had been filed before the learned Civil Judge (Junior Division), 5th Court, Howrah, being Title Suit No.627 of 2022.

Upon perusal of the police report and on the submissions of the learned Advocates for the respective parties, this Court is of the view that the dispute cannot be resolved either by the writ court or by the police authorities. The police authorities have maintained a vigil and prosecutions under Section 107 of the Code of Criminal Procedure have been submitted in order to prevent further untoward incident.

With regard to the rights of the parties in respect of the plot in question, this Court is of the view that the issue has to be decided by the civil court. The allegation of filling up of the pond and the counter-allegation of disturbance in pisciculture, are to be adjudicated by the

appropriate statutory authority. The criminal case, which has been registered, shall continue and shall be investigated into.

The Court is unable to pass any orders in favour of the petitioners. Record of rights, which have been annexed, do not reveal that the Plot No.1740 belong to the petitioners and the specific case of the respondent Nos.4 to 6 are that they are using the water from Plot No.1740. Secondly, the licence/provisional certificate for enlistment in respect of the fishery business, does not indicate that the said certificate of enlistment was issued in respect of Plot Nos.1740 and 1741. Thus, the issues have to be resolved by the appropriate forum.

The police authorities are only liable to maintain law and order. Continuous vigil shall be kept in this regard.

The writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)