

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

W.P.A 11025 of 2022

Hemlata Ghosh

Vs.

The State of West Bengal & Ors.

For the petitioners : Mr. Shyamal Kumar Bhattacharjee, Adv.

For the State : Mr. Gausal Alam, Adv.
Md. Yusuf Ali, Adv.

Advocate Commissioner : Mr. Arjun Mookerjee.

Last Heard on : 22.09.2022.

Delivered on : 23.09.2022.

Moushumi Bhattacharya, J.

1. The petitioner seeks a direction on the respondent authorities to repair the public embankment at Atpukur, Haroa, North 24 Parganas and to ensure that excess rain water during the rainy season is drained out from her land. The petitioner is a senior citizen and a widow who is residing in Haroa in the concerned District of the State. The petitioner complains that she is unable to carry out paddy cultivation in her land by reason of the inundation of the land

by the waters of the Bidyadhari river. The petitioner further complains that there are several breaches caused by local people in the embankment which has led to inundation of the petitioner's land by the waters of the Bidyadhari river.

2. The State respondents are represented and contest the writ petition by placing a Report of the Officer-in-Charge, Haroa Police Station, Basirhat. The Report states that there has been no instance of cutting of the embankments of the Bidyadhari river from the Tanagaria Sluice Gate, to Laler Sluice Gate. The Report also states that the local people did not support the case of the petitioner. The Report ends with the statement that the Police authorities are keeping vigil in the area to collect intelligence in the matter.

3. The objection taken on behalf of the State authorities appears to be contrary to the Report of the learned counsel who was appointed Advocate Commissioner by an order dated 14.7.2022. The Report of the learned Advocate Commissioner is a comprehensive report based on the inspection and inquiry undertaken by the learned Advocate Commissioner. The Report contains the following facts :

- i) There are fifteen breaches and/or channels in the embankment adjoining the Bidyadhari river.
- ii) The breaches were made, in all probability, by locals.
- iii) There are two sluice gates at Tanagaria and at "Nal" / "Lal".
- iv) The sluice gate at Tanagaria was padlocked by local persons.

4. The above facts are supported by more than twenty photographs taken by the learned Advocate Commissioner. Apart from the breaches caused to the embankment, the photographs show the petitioner's land in a completely inundated condition. The land in fact is hardly visible and looks like a lake / waterbody in the photographs. The sluice gates from river at Tanagaria and "Nal" or "Lal" are also seen in the photographs.

5. From the submissions of the learned counsel appearing for the petitioner and the statements made in the Report of the learned Advocate Commissioner, it appears that the petitioner is able to carry out paddy cultivation only once a year after the monsoon season and after the water is drained out of the land for such purpose. This is by reason of the fact that the water of the Bidyadhari river is saline water which is not suitable for paddy cultivation. While the locals of the area carry out pisciculture for the rest of the year, the petitioner's livelihood only depends on paddy cultivation which the petitioner is able to do only once a year and that too subject to the water of the Bidyadhari river being drained out from her land.

6. The photographs clearly show that the petitioner's land is submerged by the water of the Bidyadhari river. This would naturally make it impossible for the petitioner to carry out paddy cultivation for the rest of the year because of the salinity of the water. There is also little doubt that the water of the Bidyadhari river enters the petitioner's land by reason of the breaches in the embankment. The existence of fifteen breaches are recorded in the Report of

the learned Advocate Commissioner who has also made oral submissions with regard to the same.

7. It is not practicable to ascertain as to who is behind the breaches in the embankment of the Bidyadhari river. The admitted fact before the Court is that the petitioner is suffering continuing losses to her life and livelihood by reason of such breaches in the embankment. The concerned State respondents should hence promptly act in addressing the petitioner's concerns.

8. WPA 11025 of 2022 is accordingly disposed of with a direction on the Chief Engineer, Irrigation and Waterways Directorate/Department, Government of West Bengal, to forthwith inspect the breaches caused to the embankment of the Bidyadhari river as recorded in the Report of the learned Advocate Commissioner and coordinate with the concerned State Officials to fill up and repair the breaches. The concerned State respondents shall also ensure that the water of the Bidyadhari river is drained out of the petitioner's land at regular intervals so as to ensure that the petitioner can carry out paddy cultivation on her land without any obstruction, natural or man-made. The exercise as directed shall preferably be completed within a period of 10 weeks from today. The drainage of water from the land of the petitioner shall be done within 6 weeks from today. The Police authorities are directed to maintain continuing and intensified vigil in the area to ensure that no person or authority indulges in any act of causing any form of breach or opening in the embankment which would result in flooding of the area with the saline waters of the Bidyadhari river. The learned Advocate Commissioner is discharged.

9. The writ petition is disposed of accordingly.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)