

21
15.02.2022
Ct. No.10
b.das

W.P.A. 14578 of 2021

(Via Video Conference)

Lakhraj Shaw & Ors.
Vs.
State of W.B. & Ors.

Mr. Supratim Dhar
Mr. Rudranil De
Mr. S. Bhattacharya
Mr. Ziaul Haque ...for the petitioner.

Mr. Chandi Charan De
Mr. Soumitra Bandyopadhyay
Mr. Anirban Sarkar ...for the State.

The petitioners have primarily challenged the order impugned dated 14th January, 2021. It was alleged that the petitioners filled up a waterbody by surrounding the same with the boundary wall. An enquiry was held by the Assistant Director of Fisheries, Burdwan and by an order dated November 9, 2016, the Assistant Director held that there was no question of illegal filling up of waterbody and there was no violation of Section 17A of the West Bengal Inland Fisheries Act, 1984 & 1993 by the present writ petitioners.

The State respondents carried an appeal against the said order before the Director of Fisheries which was disposed of by the Director of Fisheries by an order dated

February 22, 2017 in absence of the petitioners. The petitioners preferred an appeal against the said appellate order before this Court and by an order dated 5th February, 2020 in FMA 427 of 2020, an Hon'ble Division Bench of this Court remanded the matter to the Director of Fisheries for fresh consideration upon affording opportunity to the writ petitioners of being heard. In compliance of the said order, the Director of Fisheries considered the submissions made on behalf of the parties before him and by the impugned order, recorded that the plot in question is classified as "Pukur" in the Record of Rights.

Learned counsel appearing for the petitioners has taken the Court to the C.S. Record of Rights as well as the draft publication of R.S. Record of Rights which demonstrate that the plot was recorded as "Bastu" therein. The Director of Fisheries, in the order impugned, has relied upon a Memo being No.IV/52/Con/15/71/LM/18 dated 24th January, 2018, restoring the classification of the land as "Pukur".

Learned counsel for the petitioners submits that the petitioners were not made over a copy of such memo at the time of hearing and were not in a position to controvert the same. According to the learned counsel, the order of the Director of Fisheries is not a reasoned order and ought to be set aside. The order merely relies upon the memo dated 24th January, 2018 and bereft of any consideration leading to issuance of the same. The petitioners seek opportunity

before the appellate authority to controvert the documents relied on by the authority in course of hearing.

It is submitted on behalf of the State respondents that the land was originally recorded as “Pukur” in the R.S. Record of Rights and was somehow converted to “Bastu” beyond knowledge of the authority. Upon having knowledge of such recording which was not authenticated, the land was again recorded as “Pukur” in the L.R. Record of Rights.

Learned counsel further submits that the petitioners took no steps for correction of the R.S. Record of Rights within the stipulated time frame.

The order impugned relies on the memos dated January 15, 2021, September 24, 2015 and January 24, 2018, copies of which were admittedly not made over to the petitioners and as a consequence, the petitioners were deprived of the opportunity of making their submissions with regard to the said memos.

The petitioners pray for an opportunity to make their submissions before the appellate authority, that is, the Director of Fisheries, with regard to the said documents after copies of the same are made over to them.

In view of the same, the matter is remanded for fresh consideration to the Director of Fisheries, West Bengal upon giving sufficient opportunity of hearing to all the interested parties including the petitioners. The Director shall take necessary steps for handing over copies of the memos as referred to earlier to the petitioners prior to commencement

of the hearing in order to enable the petitioners to deal with the same, in course of hearing. It is expected that the hearing shall be completed within a period of three months from the date of communication of this order.

The order dated 14th January, 2021 is hereby set aside.

The writ petition being W.P.A. 14578 of 2021 is disposed of.

However, there shall be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)