

S/L 11
20.12.2022
Court. No. 19
GB

W.P.A. 27740 of 2022

Molla Nuruddin Ahamad
VS
The State of West Bengal & Ors.

*Mr. Achintya Kumar Banerjee,
Mr. Jayanta Samanta,
Ms. Indumouli Banerjee*

...for the Petitioner.

*Mr. Jahar Lal De,
Mr. Srikanta Paul*

...for the State.

*Mr. Sani Hossain,
Ms. Salma S. Shah,
Mr. Miraj Hossain*

...for the Respondent Nos.9 to 16.

Affidavit-of-service filed in Court today, be kept with the record.

The petitioner alleges that foul water from the premises of the respondent nos.9 to 16 was getting stagnated in a water body, of which the petitioner claims to be the exclusive owner.

The learned advocate for the respondent nos.9 to 16 denies the title of the petitioner and submits that a suit is pending in this regard. An order of status quo is also subsisting, it is contended.

However, the issue with regard to the title and possession of the area comprising the water body, is not relevant for the disposal of the writ petition.

The learned advocate for the respondent nos.9 to 16 has submitted a bunch of official communications between the Pradhan, Aniya gram panchayat and the Executive

Engineer, Hooghly Highway Division-II, (PDW Roads). The Pradhan, Aniya gram panchayat approached the Executive Engineer, Hooghly Highway Division-II, (PDW Roads) seeking permission to construct an underground drain for drainage of the dirty water which would collect in front of the house of Khandakar Motior Rahaman and others. Such permission was given by the Executive Engineer, Hooghly Highway Division-II, (PDW Roads) and the Pradhan was allowed to lay a pipeline under the blacktopped surface by maintaining a depth of 600 mm from the top level of blacktopped surface without causing any damage to the road.

Such permission was given to enable the panchayat authorities to drain out the waste water in the interest of the public. The cost was to be borne by the gram panchayat. The Pradhan was also directed to consult the Assistant Engineer, Serampore Bridge Highway Sub-Division.

It also appears that the Pradhan complained to the Executive Engineer, Hooghly Highway Division-II, (PDW Roads) about the resistance which was posed by the petitioner and his men and agents at the time of execution of the work. It had been categorically stated that the laying of pipelines was obstructed and the plants and machinery were destroyed. Allegations of attack by the petitioner have also been made. The Pradhan requested the authority to lodge an FIR and take strong action against the miscreants who had supported the petitioner by destroying public property. It also appears that the Pradhan lodged a complaint before the

Officer-in-Charge, Chinsurah Police Station on October 5, 2022.

Thus, this Court is of the opinion that the petitioner's case cannot be decided in this proceeding in view of the facts which have emerged during the course of hearing of the writ petition.

The writ petition is disposed of with a direction upon the District Magistrate, Hooghly, Chinsurah to look into the matter especially with regard to the allegation of the respondent nos.9 to 16 and also of the Pradhan. Although, it is the bounden duty of the gram panchayat to ensure that any water body within the area whether it is privately owned or is a public property, must be kept clean and pollution free in order to preserve the health and hygiene, the petitioner could not have resisted construction of the drain.

The other issues which have been raised by both the parties shall be considered by the District Magistrate and a reasoned order shall be passed upon hearing all the parties. The issues to be enquired into and disposed of would be whether the pipeline which was permitted by the Executive Engineer, Hooghly Highway Division-II, (PDW Roads) Directorate was being laid in accordance with such permission so that the same would lead to the panchayat drain or whether such drain would pollute the water body either used or owned by the petitioner. Also, whether the petitioner had caused any destruction to the public property and had engaged in acts of vandalism when such work was being executed by an authority under the law must be

ascertained. Necessary steps shall be taken and orders shall be passed accordingly. All the parties involved, namely, the petitioner, the respondent nos.9 to 16, the Pradhan of Aniya gram panchayat and the Assistant Engineer (PWD Roads), Serampore Bridge Highway Sub-Division shall be heard. All the parties will submit their respective documents before the District Magistrate at the time of hearing. The work of laying pipelines as per the permission should be supervised by the Highway Division, PWD (Roads).

The petitioner will serve a copy of the writ petition along with a server copy of this order upon the District Magistrate.

The entire exercise shall be completed within a period of three months from date of communication of this order.

Accordingly, the writ petition is disposed of .

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)