

26.07.2023
Item No.05
Court No.6.
S. De

**F.M.A. 178 of 2023
With
I.A. No. CAN/1/2023**

**Subhankar Chakraborty.
Vs
State of West Bengal & Ors.**

Mr. Sanjib Seth

...for the appellant.

Mr. Kallol Basu,

Ms. Riya Kundu,

...for the respondent nos. 12 & 13.

Mr. Subrata Kr. Sinha,

...for the respondent nos.14, 15 & 16.

Mr. Sandipan Banerjee,

Mr. Ankit Sureka,

Mr. Sobhan Majumder,

...for the H.M.C.

By consent of the parties the appeal and the connected application are taken up together for hearing.

This appeal is directed against a judgment and order dated December 21, 2022, whereby a learned Single Judge of this Court disposed of the appellant's writ petition being WPA 22124 of 2022.

The appellant had approached the learned Single Judge inter alia with the following prayers :

"a) A writ of and/or in the nature of mandamus, commanding the respondent authority concerned to act and proceed in accordance with law and further directing the respondent nos.2 to 11 to take appropriate legal

steps and penal action against arbitrary and illegal acts and activities done by the private respondents for filling up the tank/water area situated at L.R. Dag No. 835, L.R. Khatian No. 11483, 12079, 956, 9808, 9846, Mouza – Unsani, Police Station-Jagacha, District-Howrah for making construction thereon in a most illegal manner to achieve illegal gain and further commanding the said respondents to restore the tank/water body in its original position as before;

b) A writ in the nature of prohibition forbidding the private respondents and/or their associates from filling up of the tank/water area as stated hereinabove and further prohibiting them from constructing any commercial building thereon in breach of the provisions of the West Bengal Inland Fisheries Act, 1984 and the Environmental Laws and also the provisions of the Constitution of India;

c) Issue a writ of or in the nature of Certiorari commanding the respondent authorities to forthwith certify and transmit the records of the petitioner's case to the Learned Registrar, Appellate Side, High Court, Calcutta, so, that after perusal of the same conscionable justice may be done to the petitioner's case;

*d) Issue a Rule NISI in terms of prayer
(a) (b) and (c) of the petition;
(e) Make the Rule absolute after
hearing this cause shown by the
respondent authorities and/or if no
causes is shown;
(f) Pass an ad-interim order
restraining the private respondents
from filling up the tank/water area
situated at L.R. Dag No. 835, L.R.
Khatian No.11483, 12079, 956, 9808,
9846, Mouza-Unsani, Police Station-
Jagacha, District-Howrah in any
manner whatsoever”*

The case of the appellant/writ petitioner in the writ petition is, as we have seen, that the private respondents have illegally filled up a water body. However, it appears that the learned Single Judge was not properly assisted and, accordingly, the learned Judge recorded in the impugned order that “the petitioner complains that a water body has been incorrectly classified as ‘Bastu’ land. The petitioner prays for correction of the record of rights.” Having so observed, the learned Judge disposed of the writ petition with the following directions :

“The Court is of the opinion that a different forum is to be approached for the purpose of correction of record of rights. The Court under Article 226 of the Constitution of India is not appropriate forum to decide the issue.

In view of the above, the instant writ petition is disposed of giving liberty to the petitioner to approach the appropriate forum for remedy, if so advised.”

Being aggrieved, the writ petitioner is before us by way of this appeal.

Learned advocate for the appellant says that the prayer of the writ petitioner was not for correction of record of rights. Hence, the matter needs to be reconsidered.

We have set out hereinbefore the prayers in the writ petition. It seems that the learned advocate for the appellant is correct. We are sure that there was lack of proper assistance to the learned Single Judge.

However, the writ petition needs reconsideration. Accordingly, we remand the matter to the learned Single Judge having determination to hear the writ petition. The order under appeal is set aside.

Learned advocate for the appellant says that any action taken by the respondents prior to disposal of the writ petition should abide by the result of the writ petition. We do not say anything on that score. If that is the effect in law, it will be so.

We have not entered into the merits of the case at all.

FMA 178 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2023.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)