

28.08.2023
Item No.6
gd/ssd

WPA(P)/440/2023
SATYENDRANATH HALDER AND ORS.
VS
STATE OF WEST BENGAL AND ORS.

Mr. Lakshminath Bhattacharya
..for the Petitioners.

Mr. Lalit Mohan Mahata,
Mr. Ziaul Haque
..for the State.

Mr. Mrinal Kanti Ghosh,
Mr. Sounak Mandal
..for the Respondent Nos.10 to 12.

1. By this public interest litigation the petitioners seek for a direction upon the official respondents to restrain the private respondents from erecting any illegal construction in a water body in Hal Dag No.395 measuring about 6.03 decimal i.e. nearly about 21 Bigha.

2. In this regard representation has been given to the authorities and alleging that no action has been taken, the petitioners have filed this writ petition.

3. The learned Government counsel raises a preliminary objection stating that there is a political interest behind this writ petition and it is not a genuine public interest litigation.

4. Be that as it may, we find from the documents annexed in the petition that the plot of land in question in Dag No.395 along with five other plots

were subject matter of consideration for mutation under Section 50 of the WBLR Act, 1955 and at the instance of the private respondents, namely, 10th and 11th before the prescribed authority under the said enactment. This application appears to have been filed sometime during 2012 on which notice was issued and since no objection was filed on the claim made by the private respondents and order was passed by the prescribed authority on 21.09.2012 recording the name of the private respondents in respect of the six plots of land which include Dag No.395.

5. According to the petitioners, the private respondents are illegally putting up construction and the same should be immediately interfered with and the water body has to be preserved so as to enable the Hindus residing in the area to offer their prayers and perform other religious function since there is a temple which is situated in the near vicinity which was established in the year 1933.

6. The learned advocate appearing for the 10th and 11th respondents produced photographs which, prima facie, show that the water body remains intact.

7. However, the allegation appears to that the 10th and 11th respondents are preventing the Hindus from performing their religious rituals in the said water body.

8. This allegation is emphatically denied by the 10th and 11th respondents.

9. Be that as it may, as long as the order of mutation passed by the prescribed authority under Section 50 of the WBLR Act, 1955 remains intact, no direction can be issued by this court contrary to the findings recorded in the said order. However, if the petitioner or any other person is aggrieved by such an order, it will be well open to the said person to challenge the said order by filing an appeal as provided under the provisions of the WBLR Act, 1955.

10. The learned advocate appearing for the petitioners submitted that the petitioners will not have any locus standi to file such an appeal.

11. In our view, there cannot be any bar for a third party from filing an appeal if the third party is able to convince the authority that the water body in question is meant for the general public and no person can claim exclusive right over the said water body.

12. The learned advocate appearing for the 10th and 11th respondents submitted that they have got right over the property pursuant to a registered sale deed dated 1st January, 1900.

13. In the light of the disputes which have been raised and also noting that as on date the plot of land in question continues remain as a water body and in the light of the submissions made by the learned

advocate appearing for the 10th and 11th respondents based on instructions given by the 10th and 11th respondents that they are not preventing the Hindus of the area for performing religious rituals in the water body during temple festival and other days, no further direction is required to be issued in this writ petition except to observe that the plot of land in question shall be preserved as the water body and the public of the area belonging to all faiths and religion should be permitted to freely access the water body and to perform other religious rituals.

14. We leave it open to the petitioners to challenge the order passed by the prescribed authority under the provisions of the WBLR Act, 1955 by filing an appeal before the appellate authority. If such appeal is filed, the appellate authority shall issue notice to the 10th and 11th respondents and decide the maintainability and the locus standi of the writ petitioners and thereafter proceed to take a decision in accordance with law.

15. With the above observations, the writ petition stands disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)