

October 12, 2023
Sl. No.7
Court No.19
s.biswas

CO 3260 of 2023
With
CAN 1 of 2023

Salewar Bibi and others
vs.
Musibar Laskar and others

Mr. Sandip Das

... for the petitioner

Mr. Sounak Bhattacharya

Mr. Sounak Mandal

... for the opposite parties

By the order impugned, the learned court below modified an earlier order of status quo in respect of the disputed property, which is a pond. It appears one Safi Alam Laskar had filed an affidavit before the learned court below stating on oath that the plaintiffs had given him permission, in form of a licence to conduct pisciculture from the said pond. Both the petitioners and the plaintiffs claimed right, title and interest in respect of the said pond, while the plaintiffs claim 16 annas share, the petitionerS claim some share as well. The order of status quo was passed on the prayer of the plaintiffs with regard to the nature, character and possession.

Thereafter, an application was filed in the nature of prayer for modificateion, of the order of status quo and for further order to allow Safi Alam Laskar to conduct pisciculture which was going on from the said pond.

The learned Civil Judge (Junior Division), 1st Additional Court, Diamond Harbour rejected the said prayer. An application for reconsideration was filed. By order dated August 29, 2023, the application for reconsideration was allowed. The plaintiffs were allowed to catch fish from the pond situated at plot nos.3027 and 3017 in presence of a local inspection commissioner. The learned advocate Mr. Hasnat Sk. was appointed as local inspection commissioner. He was directed to observe the entire proceedings, so that no breach of the order of status quo took place. The learned advocate commissioner was also allowed to take police assistance. The commissioner's fees was fixed at Rs.3000/-.

The petitioners challenged the said order by filing the revisional application on the following grounds:

- a) The learned court could not have modified, vacated or varied the order of status quo without proper application under Order 39 Rule 4 of the Code of Civil Procedure.
- b) The defendants had share in the pond, hence were entitled to the usufructs.
- c) The licence, if any, was given in violation of the order of status quo as the parties were directed to maintain status quo with regard to the nature, character and possession.

Allowing Safi Alam Laskar to continue pisciculture was an act of violation of the order of status quo as temporary possession was given to Safi Alam Laskar to use the pond for his business, even after the licence expired in the year 2022, as would be available from the affidavit of Safi Alam filed in court.

Mr. Bhattacharya, learned advocate for the opposite parties/plaintiffs submits that the affidavit filed in the court clearly indicates that licence to engage in pisciculture was given to the predecessor of Safi Alam Laskar twenty years ago. Such arrangement continued up to June 20, 2022. Another one month would be required to clear out the pond as the fishes which were cultivated had reached maturity. Under such circumstances, upon imposition of serious conditions, the application for reconsideration of the earlier order was allowed. It is further submitted that the order impugned amounts to modification of the order of status quo. Hence, the revisional application does not lie.

Considered the rival contentions of the parties. The suit is for declaration, recovery of khas possession and injunction. It is not a suit for partition. Thus, the defendants' claim of a share in the usufructs is not accepted. The defendants' claim in the share of the pond shall be adjudicated in the

suit. However, as it appears that proper precaution was taken by the learned court by allowing pisciculture, this court does not have any reason to interfere with the order impugned. As Mr. Bhattacharya has stated that only a month will be required to remove all the fish, the order impugned is modified to the extent that within November 20, 2023, the fishes in the pond shall be cleared by Safi Alam Laskar and the plaintiffs shall ensure that no further licence or permission is given to any person to use the said pond for pisciculture or other business. The status quo order already passed, shall not be violated by the parties and shall continue. The learned Advocate Commissioner shall monitor.

With regard to the contention of Mr. Das, learned advocate for the petitioners/defendants, that the status quo order had been violated as the pisciculture continued after expiry of the licence, the petitioners are at liberty to proceed in accordance with law by filing proper application under Order 39 Rule 2A of the Code of Civil Procedure.

The learned advocate commissioner will ensure that Safi Alam and the plaintiffs clear out all the fishes by November 20, 2023 and the pond is not used for any business purpose, thereafter. A report shall be filed before the learned court below by the

learned Advocate Commissioner after the entire exercise is complete.

The fact that Safi Alam Laskar was allowed to conduct pisciculture from the pond, shall not affect the merits of the suit and the rival claims of the parties.

The revisional application is disposed of. With the disposal of the revisional application, CAN 1 of 2023 also stands disposed of.

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

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)