

3.1.2023
Sl.No.4
Ct.19
sn

WPA 24647 of 2022

**Sri Mahabir Kuiri @ Mahabir Kuiry
Vs.
The State of West Bengal & Ors.**

**Mr. Falguni Bandopadhyay
..for the petitioner**

**Mr. Supratim Dhar
Mr. Dhananjoy Nayak
..for the State**

The petitioner has engaged a new learned advocate. Exception to the report of the Block Development Officer, has not yet been filed.

On the last two occasions, another set of learned advocates appeared before this Court and prayed for time to file exceptions to the report filed by the Block Development Officer. Repeatedly, directions were issued upon the petitioner to hand over possession of the tank fishery to the panchayat authorities in the presence of the Block Development Officer, Bagmundi Development Block. Such direction was lastly passed on December 16, 2022. The petitioner was asked to hand over possession within December 22, 2022. The petitioner failed to comply with the orders.

No further extension of time to file exceptions can be granted under the facts and circumstances. The petitioner is continuing to run his fishing business from the tank fishery without any authority

of law and without paying a single farthing to the government.

The previous Pradhan, who was not authorised to grant such permission had given a “No Objection” in respect of the tank in favour of the petitioner. No lease rent had been received from the petitioner. No lease deed had been executed by the petitioner. The entire activity was being carried on illegally.

The report of the Block Development Officer indicated that Sub-Rule 2 of Rule 13 of the West Bengal Panchayat (Gram Panchayat Accounts, Audit and Budget) Rules 2007 did not permit the Pradhan to extend a lease beyond the term of her office. No resolution was passed by the Artho-O-Parikalpana Upa Samity Samity for grant of the alleged lease in favour of the petitioner. The tenure of the erstwhile Pradhan who issued the letter expired on August 2018 and as such she could not have, on her own accord extended the lease up to 2025 by merely giving a certificate in the official letter head. Even the trade licence of the petitioner was not found to be in order. There were also interpolations in the documents.

The report was submitted before the Court and the illegalities were recorded in the order dated November 22, 2022. Time to file exceptions to the report was granted

Mr. Bandopadhyay, learned advocate, appears on behalf of the petitioner and prays for time to file the exceptions. The successful bidder had not yet been given possession of the tank although auction was held some time back. Admittedly lease of government property cannot be given, except by holding a public auction.

The Court had directed that the fishes must be removed by the petitioner from the tank, with intimation to the Pradhan and the water should not be drained out. No mischief should be caused, which may affect the condition of the tank and the quality of the water. Such order was passed on November 22, 2022. The matter came up once again on December 16, 2022. The learned advocate for the petitioner prayed for an adjournment and the Court directed that possession of the tank fishery be handed over within December 22, 2022.

The matter was fixed today. The Court appreciated the urgency felt by the authorities and passed the earlier directions. The petitioner's wrongful possession of the tank has caused huge loss to the public exchequer. Enjoyment of public property by causing loss to the public exchequer, cannot be allowed to be continued. No further indulgence can be shown to the petitioner.

There is undoubtedly nothing on record to show that the petitioner had any semblance of a right to continue to possess the tank fishery.

Learned advocate for the petitioner prays for some time to clear out the fish and thereafter hand over possession of the tank. As a last chance such prayer is allowed only on sympathetic consideration.

The writ petition is disposed of with a direction upon the petitioner to clear out the fishes from the tank within January 27, 2023.

The panchayat authorities and the Block Development Officer shall be present when such fish shall be cleared. The tank will be handed over to the authorities immediately by the petitioner.

The petitioner shall not cause any damage to the tank fishery.

The Officer in Charge, Bagmundi Police Station shall render all assistance to the authorities during the entire exercise. If the petitioner fails to act on the basis of the order of this Court, the authorities can take possession of the water tank with police help, on any day after January 28, 2023.

This writ petition is disposed of.

There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)