

20.02.2023
Court No. 19
Item No.24
CP

WPA No. 26270 of 2022

Radhakanta Porel & anr.
Vs.
The State of West Bengal & Ors.

Mr. Kushal Chatterjee
Mr. Prasayan Mukherjee
Mr. Shibjit Milna

...for the petitioners.

Mr. Lalit Mohan Mahata
Mr. Prasanta Behari Mahata

....for the State.

Mr. Koushik Chatterjee
Mr. Nilanjan Adhikari

...for the respondent nos. 2 and 3.

The Block Land and Land Reforms Officer, Uluberia – II has filed a report which is taken on record. There is a guard wall on R.S. Plot No. 348 corresponding to LR. Plot No. 353 of Mouza – Baniban. The guard wall with a few steps, leading to the pond, had been constructed on the bank of the pond far away from the water body. As per the pictures annexed to the report, it appears that the construction of the wall with the steps at the centre did not block the access or pathway to the pond.

The panchayat authorities state that in order to preserve the pond and to enable the general public

to use the same conveniently, such protective measure was taken.

The R.S. record of rights have been handed over by the panchayat authorities indicating that the pond/plot was a debutter property and used for the benefit of the people. Allegedly, the shebait had collusively recorded their names in respect of the said plot, in the L.R. records. A suit was filed by the deity being Title Suit No. 279 of 2016 and an order of injunction had been passed directing the parties to maintain status quo with regard to the nature and character of the suit property.

The panchayat authorities have also submitted that some of the raiyats as per the L.R. records had granted a 'No Objection' to the panchayat authorities, for construction of the guard wall and the steps. It is submitted that the panchayat authorities were duty bound to protect the pond and prevent overflow of water to the main road especially during the rainy season. In order to avoid inconvenience that would be caused to the people in the locality, such steps were taken. It also appears that the guard wall and the steps were constructed with the money received from the district authority under the 14th Finance Commission.

The petitioners have also filed a civil suit and obtained an order of status quo.

The panchayat authorities allege that the debutter was a public endowment and the pond was issued by the local villagers. The petitioners allege that the pond was the exclusive property of the petitioners.

Two civil suits are pending. Title, in respect of the pond shall be decided in the suits. If the parties are aggrieved by any violation of the order of status quo, they are at liberty to approach the civil court in accordance with law.

This court has restricted the query to whether the action of the gram panchayat had deprived the right of the petitioners and prevented them from using the pond. The pictures and the dimensions of the wall, do not indicate that the access of the petitioners to the pond has been hindered in any way.

The petitioners are at liberty to use the pond as per the directions of the civil court. It is also made clear that such construction by the panchayat authorities would not automatically result in denial of the right, title and interest of the petitioners in respect of the pond in question. Such right shall be decided in the civil suits which are pending.

The prayers to reclaim the plot and seek restoration of the same to its original position, can also be ultimately decided in the civil suit.

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.)