

17.01.2023
Sl. No.2(DL)
srm

W.P.A. No. 28343 of 2022
Somnath Sarkar
Vs.
State of West Bengal & Ors.

Mr. Saptarshi Chakraborty
....for the Petitioner.

Mr. Moloy Singh,
Mr. Bibekananda Tripathy
...for the State-respondents.

Mr. Panchanan Hajra
...for the Respondent No.5.

Affidavit-of-service is taken on record.

The petitioner prays for an order upon the authorities to permit construction of a guard wall on the “*pukur par*” in order to protect his house. The property of the petitioner is House No.10 under Ward No.5 being Plot No.2571 of mouza Patulsara, District-Hooghly. The pond is at Plot No.2570.

The learned Advocate for the respondent No.5 opposes such prayer and submits that the construction of the petitioner has already extended to Plot No.2570, which is a pond. The respondent No.5 claims to be the owner of the said plot. A civil suit is pending with regard to the

right, title and interest over the said pond. According to the said respondent, the construction of the guard wall would actually be a construction on the pond which has been encroached by the petitioner.

In view of the factual disputes and the dispute with regard to the right, title and interest, this Court is of the view that no mandatory orders can be passed upon the authority to permit such construction.

The issue with regard to the construction of the guard wall is also the subject matter of the civil suit and as such no order can be passed. The learned civil court will decide the issue which has been raised, if the petitioner approaches the civil court in accordance with law seeking orders to protect his land from being eroded as a temporary measure, during the pendency of the suit and without claiming any equity. This court has not gone into the merits of the claims and counter claims of the parties.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)