

20.02.2024
Supple List
Item No. 2
PG/KS
Ct. No.1

M.A.T. 368 of 2024
I.A. No. CAN 1 of 2024

State of West Bengal & Ors.
Versus
Suvendu Adhikari & Anr.

Mr. Kishore Datta, Ld. A.G.
Mr. Amitesh Banerjee, Ld. Sr. Standing Counsel
Mr. Debangshu Dinda
.....for the State/Appellants

Mr. Rajdeep Majumder
Mr. Moyukh Mukherjee
Mr. Suryaneel Das
Mr. Chiranjit Pal
.....for the respondent/writ
petitioner no.1

Mr. Billwadal Bhattacharyya
Mr. Tarunjyoti Tewari
Mr. Anish Kumar Mukherjee
Mr. Suryaneel Das
.....for the respondent/writ
petitioner no.2
Mr. Asok Chakraborty, Ld. A.S.G.
Mr. Srijib Chakraborty
.....for the Union of India

1. Leave granted to file appeals, which shall be registered and shown in the supplementary list for today.
2. This appeal by the State of West Bengal & others is directed against the interim order dated 19th February, 2024 in W.P.A. 4078 of 2024. By the said order, the learned Single Bench had stayed the operation of the order dated 18th February, 2024 passed by the Sub-

Divisional Officer, Basirhat, North 24 Parganas passed under Section 144 of the Code of Criminal Procedure.

3. In the said writ petition i.e., W.P.A. 4078 of 2024, there were two writ petitioners. The first writ petitioner is a member of the West Bengal Legislative Assembly and Leader of the Opposition and the second writ petitioner, a member of the West Bengal Legislative Assembly. They prayed for permitting them to visit Sandeshkhali on 19th February, 2024 or 20th February, 2024 and also prayed for setting aside the communication dated February 15, 2024 issued by the Superintendent of Police, Basirhat Police District, where the permission to visit Sandeshkhali was denied on the ground that the visit of the writ petitioners might lead to violation of the order passed under Section 144 of the Code of Criminal Procedure by the Sub-Divisional Officer, Basirhat.
4. The learned Single Bench while passing the interim order dated 19th February, 2024 has given elaborate reasons and after granting an order of stay of the order dated 18th February, 2024 passed under Section 144 of the Code of Criminal Procedure, the writ petitioners, the respondents herein were allowed to visit Sandeshkhali Gram Panchayat under Sandeshkhali Block – II on 20th February, 2024 subject to certain conditions, which in our opinion, appear to be very stringent conditions. For better appreciation, the relevant portion of the order is quoted hereinbelow:-

“The petitioners will be allowed to visit Sandeshkhali Gram Panchayat under Sandeshkhali Block – II on February 20, 2024.

The petitioners, with 9:30 p.m. of this date, shall submit their proposed plan of visit along with the route map before the local police station.

The petitioners shall also file an undertaking before the local police station not to engage in any activities that may lead to deterioration of the law and order situation in the locality.

The State may deploy required number of security personnel to ensure that no untoward incident takes place during their visit.

The Superintendent of Police, Basirhat shall also file a report before this Court on the next date regarding the number of registered criminal cases relating to rape and sexual assault within the jurisdiction of Sandeshkhali Police Station from February 1, 2024, to the present date.”

5. The writ petition has been directed to be listed after seven days from the date of the order i.e., 19th February, 2024 and the State of West Bengal and the Union were at liberty to file their affidavits in response to the allegations made in the writ petition in the meantime.
6. Thus, it is clear that the learned Single Bench had granted an order of interim stay after recording its prima facie opinion and has kept open the option of the State of West Bengal to file their affidavits in response to the allegations made in the writ petition.
7. Therefore, we find that such a discretionary order cannot be interfered with, until and unless it is shown that it is patently illegal or an outcome of total non-application of mind or passed in utter disregard to the

material facts. None of these three conditions stand attracted in the case for us to interfere with the said order.

8. The learned Advocate General appearing for the appellants/State submitted that as of now, the order passed under Section 144 of the Code of Criminal Procedure has been restricted to only twelve places. However, to be noted that the order passed under Section 144 of the Code of Criminal Procedure has been set aside by the order in W.P.A. 3869 of 2024 dated 13th February, 2024 against which an appeal has been preferred for which leave has been granted today.
9. Thus, on the date when the third order was passed under Section 144 of the Code of Criminal Procedure, the order passed in W.P.A. 3869 of 2024 dated 13th February, 2024 held the field and the Sub-Divisional Officer could not have ignored such an order.
10. Therefore, we agree with the prima facie observations made by the learned Single Bench while granting an order of stay of the order dated 18th February, 2024, however, on a word of caution that by virtue of the permission, which has been granted to the writ petitioners, further law and order problem should not arise.
11. It is the two writ petitioners, who have been permitted to visit the Sandeshkhali Gram Panchayat under Sandeshkhali Block – II on 20th February, 2024

and conditions and restrictions have been imposed on both the writ petitioners.

12. We make it clear that both the writ petitioners shall be permitted to visit the Sandeshkhali Gram Panchayat under Sandeshkhali Block – II today (20th February, 2024) and the writ petitioners shall ensure that none of their supporters or people belonging to the political party to which they are affiliated to, shall accompany them except the security personnel, who have been deployed for the writ petitioners.
13. The Superintendent of Police, Basirhat Police District shall comply with the directions issued by the learned Single Bench and the State of West Bengal shall also deploy the required number of security personnel to ensure that there is no breach of peace in the area.
14. While on this issue, we need to point out that a learned Single Bench of this Court had taken up a suo motu petition, which has been assigned the as W.P.A. 4011 of 2024. In the said order, the learned Single Bench has expressed gross disappointment after going through several newspapers and electronic media reportings, where it has been reported that large number of women in Sandeshkhali have been sexually assaulted at gunpoint. Specific reference has been made to a few of the newspapers, wherein it appears to have been reported that the tribal lands were taken

away forcibly in violation of all legal formalities and laws and that there are certain violence over the properties of the innocent people.

15. The Court can take judicial notice of the fact that the entire problem stood precipitated after the Enforcement Directorate conducted a search operation in the premises of the elected Pradhan of the Zilla Parishad stated to be one, Sk. Shahjahan. The State police are unable to apprehend him in spite of case having been registered for various I.P.C. offences based on the allegation that the officials of the Enforcement Directorate were brutally attacked when they were in the process of conducting the search operations.
16. It is rather surprising that the person, who is said to be the core for the problem being precipitated, cannot be apprehended till date and he is on the run defying law.
17. Considering the seriousness of the issue when the order dated 12th February, 2024 in W.P.A. 4011 of 2024 was placed before the Chief Justice on the Administrative Side, noting the relevant provisions of the rules relating to applications under Article 226 of the Constitution of India, in particular to Rule 59, the Chief Justice has treated the order passed by the learned Single Bench dated 12th February, 2024 as a report in terms of Rule 59 and directed the matter to be placed before the Division Bench dealing with Public

Interest Litigation today i.e., 20th February, 2024. Accordingly, the matter has also been listed and a supplementary cause list has been drawn. It has also been widely reported that the State having come to know that the lands of certain people in the Sandeshkhali area have been taken away from them in violation of the procedure established by law have established redressal mechanism, whereby the people, who have been affected by such violation were permitted to lodge their complaints.

18. The establishment of this redressal mechanism prima facie shows that there has been land grabbing committed in the area and the allegation that the lands owned by the tribal villagers have been forcibly taken away in violation of the legal formalities stands prima facie established.
19. Therefore, a larger view of the matter has to be taken by the State of West Bengal in the present issue and by imposing an order under Section 144 of the Code of Criminal Procedure, in our prima facie view, will not be the solution especially when the person, who appears to be the sole cause of the entire problems for the past 19 days, is still absconding.
20. In this regard, appropriate orders will be passed in W.P.A. 4011 of 2024 when the same is taken up after hearing the learned counsel for the parties therein.

21. The writ petitioners are directed to scrupulously comply with the restrictions imposed by the learned Single Bench in its interim order dated 19th February, 2024 as well as the observations and directions contained therein. We make it clear that the above observations are prima facie in nature and it will be well open to the State as well as the Union to contest all issues in the pending writ petition viz. W.P.A. 4078 of 2024.
22. With the above observations and directions, the appeal stand disposed of along with connected application.
23. No costs.
24. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)