

12.03.2024
Ct. 654
D/L16
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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 4994 of 2024

**Basudeb Ghosh
-Vs-
The State of West Bengal & Ors.**

Mr. Jagannath Ganguly	... for the petitioner
Mr. Jayanta Samanta	
Mr. Bhaskar Chakraborty	... for the State
Ms. Sonal Sinha	
Ms. Srabasti Barai	... for the respondent no.4
Mr. Sanjib Kumar Mal	
Mr. Bimalendu Das	
Mr. Shomrik Das	... for the respondent nos. 6 & 7
Mr. Sunil Gupta	
Mr. Samir Choudhury	... for the respondent nos.9

Affidavit of service filed on behalf of the petitioner
is taken on record.

By the present writ petition, the writ petitioner
has prayed for restraining the respondent no.9 from
running the petrol pump at Mouza Kashiara, J.L.
No.33, Block & P.S. Mangalkot, District Purba
Bardhaman.

The brief fact of the case is that the respondent
no.9 started running the retail outlet petrol pump at a
place which is adjacent to the residential premises of
the petitioner. The emission of carbon monoxide and

other pungent smelling gas is creating health hazards to the petitioner and his family members. The petitioner is a chronic patient with kidney ailment and is undergoing medical treatment. The petitioner made several representations on his individual capacity as well as through his learned Advocate before the respondent no.6, the Bharat Petroleum Corporation Limited for taking necessary action. Since no steps have been taken by the respondent no.6 the petitioner has preferred the present writ petition.

Mr. Jagannath Ganguly, learned Advocate for the petitioner submits that in violation of the guidelines for setting up of a new petrol pump laid down by Hon'ble Green Bench Tribunal vide its order dated 18th January, 2019 and direction of Central Pollution Control Board of "*Sitting Criteria of Retail Outlet*", the respondent no.9 has been carrying on the said petrol pump. He seeks appropriate order restraining the respondent no.9 from carrying on the retail outlet of the petrol pump, since the same is hazardous to the residents of the adjoining premises.

In reply to the contentions raised on behalf of the petitioner, Mr. Sunil Gupta, learned Advocate appearing on behalf of the respondent no.9 submits that after fulfilling of the eligibility criteria of the oil company the respondent no.9 has started running the petrol pump since 27th December, 2022. On the selfsame cause of

action the petitioner filed Title Suit being No.92 of 2023 seeking decree restraining the defendant from operation of the petrol pump. The respondent no.9 entered appearance in the suit and filed an application under Order 7 Rule 11 of the Code of Civil Procedure (hereinafter referred to as 'the Code') praying for rejection of the plaint on the ground that the National Green Tribunal under Section 14 of the Green Tribunal Act, 2010 has the jurisdiction over civil cases where substantial question relating to environment is involved. The learned Trial Court upon consideration of the submission allowed the application for rejection of the plaint. The order of the learned Trial Court passed under Order 7 Rule 11 of the Code rejecting the plaint has not been appealed against. The aforesaid facts relating to the civil suits have been suppressed by the petitioner. Further the residential house of the petitioner is not in close proximity and, therefore, the contention of petitioner in the writ petition with regard to environmental hazards is not tenable. He submits that the writ petition should be dismissed. He files copy of the plaint and the orders passed by the Court of Civil Judge (Junior Division) 1st Court, Katwa in Title Suit No.92 of 2023 which is taken on record.

Mr. Sanjib Kumar Mal, learned Advocate for the respondent nos.6 and 7 submits that the oil company adhere to strict norms and rules in respect of

environmental pollution and hazards before granting of licence. The respondent no.9 having fulfilled the criteria and the terms and conditions as stipulated has been granted with the licence to run the petrol pump. The petitioner has raised the issue of emission of carbon monoxide by release of obnoxious gases causing health hazards. Be that as it may, there is no chance of emission of such gases in the petrol pump in view of the fact that no process of combustion is involved in running of petrol pump. So question of emission of obnoxious, hazardous gases is uncalled for. He files three copies of licence issued by the West Bengal Fire Service, no-objection from the District Magistrate, Purba Bardhaman and Petroleum & Explosives Safety Organisation licence respectively, which are taken on record.

At the outset, it is not disputed that the petitioner filed a civil suit before the Civil Judge (Junior Division), 1st Court at Katwa being Title Suit No. 92 of 2023. Upon perusal of the plaint in Title Suit No.92 of 2023 it is found that a similar prayer restraining operation of the petroleum pump by the respondent no.9 was made in the suit. The respondent no.9 filed application for rejection of plaint under Order 7 Rule 11 of the Code. The learned Trial Court considering the provisions under Section 14 of the National Green Tribunal Act, 2010 rejected the plaint filed by the petitioner.

Undisputedly, such order of rejection of plaint by the learned Trial Court has not been assailed before the Appellate Court. The petitioner being the plaintiff in the Civil Suit has not disclosed the orders passed in Title Suit as aforesaid. The petitioner in the writ petition has made out a case of environment pollution in carrying on the business of petrol pump by respondent no.9, which is also a ground in the Civil Suit. In view of such fact of a previous civil suit filed by the petitioner on the selfsame cause of action, this Court finds no merit in the present writ petition.

In light of the above discussion, the writ petition being **WPA 4994 of 2024** stands dismissed.

All connected applications, if any, stand dismissed.

Interim order, if any, stands vacated.

There shall be no order as to costs.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(**Bivas Pattanayak, J.**)