

19.03.2024
35 & 36
Ct. No.15
S.A.

WPA 7830 of 2019

Tushar Kanti Ghosh

-vs-

**The State of West Bengal & Ors.
with**

WPA 13010 of 2019

Tushar Kanti Ghosh

-vs-

The State of West Bengal & Ors.

Mr. Animesh Paul

Ms. Haardikaa Rajdev

...for the petitioner

Mr. Sonal Sinha

Mr. Avishek Prasad

...for the State in WPA 13010 of 2019

Both the writ petitions are taken up for consideration in presence of the learned advocates representing the petitioner and the State respondents. However, the State respondents in WPA 7830 of 2019 are not represented today.

At the outset it needs to be recorded that primarily with two main prayers these two writ petitions were instituted amongst which firstly prayer was made to give direction upon the Officer in-charge, Haroa Police Station being the respondent no.7 to register first information report on the basis of petitioner's representation and the second prayer centers around representations dated 21st April, 2019, 3rd June, 2019, 15th June, 2019 and 21st June, 2019 and non-consideration of the same by the State respondents.

Learned advocate representing the petitioner submits that he is not pressing prayer (a) by which direction has been sought for to issue mandamus upon the police authority to register first information report and according to the petitioner, the present writ petitions are required to be heard based on the grievance relating to non-consideration of the representations of the petitioner in terms of prayer (b).

This court is aware of its determination that Group IX matters pertaining to police authority does not come under the determination of this court. However, specific submission has been made on behalf of the petitioner that prayer (a) would not be pressed whereby direction has been sought for upon the police authorities to register first information report. This court has found it fit to consider prayer (b) of the writ petition which is non-consideration of the representations by the concerned authorities of Irrigation Department wherein allegation has been made against the private respondents being respondent nos.8 & 9 who with the help of local people illegally cut the embankment of Buri river on 15th January, 2019.

In order to substantiate the case made out on behalf of the petitioner based on prayer (b) submission has been advanced on the basis of the

Bengal Embankment Act, 1882 and applicability of the provisions thereunder.

It is also contended on behalf of the petitioner that as per the report filed by the State respondents it appears that there is a cut at the instance of the private respondents in the embankment of the river which needs to be repaired in terms of the relevant provisions of the Bengal Embankment Act, 1882.

On perusal of the writ petitions as well as the representations it has not been found that any allegation has been made on violation of the provisions of the aforesaid statute.

It has been averred in the writ petition that respondent nos.8 & 9 on 15th January, 2019 illegally and unlawfully cut the embankment of Buri river at Jakhali for inflow of river water into the agricultural land resulting in damage of crops of the petitioner amounting to Rs.15,00,000/-. According to the petitioner, cutting of embankment has resulted in monetary loss due to damage of crops.

After such incident which took place on 15th January, 2019, it has been submitted that petitioner lodged several first information reports but in view of the submissions made on behalf of the petitioner, the steps taken by the police authority based on first information report need not be delved into while disposing of the writ petitions. Therefore, question crops up whether the respondent nos.8 & 9 have

illegally cut the embankment of the river causing inflow of river water into the agricultural field and in order to find out the veracity of such allegation report as well as affidavit have been called for from the State respondents and in pursuant thereto report was filed by the Sub-Divisional Officer, Haroa Irrigation Sub-Division, Ghusighata, North 24 Parganas and subsequently affidavit-in-opposition was also filed. In the said report as well as in the affidavit-in-opposition it has been stated on behalf of the State respondents that right embankment of Buri river was not illegally cut but there is an old water inlet structure with gate controlled facility in a crude form which was constructed by local people which is similar to sluice structure to facilitate farmers to use river water for cultivation which is their livelihood. It is also contended on behalf of the State respondents that the area in question comprises of agricultural land, therefore, question of changing the nature and character of the land by illegally permitting the private respondents to allow inflow of river water cannot arise.

This court while exercising judicial review cannot act as a fact finding court. Therefore, it appears that the issue raised in the writ petitions needs to be adjudicated on the basis of the affidavit and report filed on behalf of the State respondents. The allegations made in the writ petition as well as in

the representations are not corroborated by the report and affidavit filed by the State respondents. Opportunity was granted to the petitioner to file affidavit-in-reply vide order dated 6th February, 2024 before 12th March, 2024 but the petitioner has not availed of such opportunity. Prayer has been made before this court to further extend the time to file affidavit-in-reply but the same is refused since the matters are on board today for final hearing.

In view of the report submitted by the State respondents and the statements made in the affidavit-in-opposition the relief claimed on behalf of the petitioner is refused.

Accordingly, both the writ petitions stand dismissed. However, there shall be no order as to cost.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis.

(Saugata Bhattacharyya, J.)