

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 21870 of 2017

Sri Pradip Roy & Anr.

Vs

The State of West Bengal & Ors.

For the Petitioners : Mr. Pankaj Halder,
Mr. Bitasok Banerjee,
Mr. Bidisha Ghosh.

For the State : Mr. Tapash Adhikary,
Mr. Somraj Dhar.

Hearing concluded on : 10.12.2024

Judgment on : 24.12.2024

Shampa Dutt (Paul), J.:

1. The present writ petition has been preferred by the petitioner praying for direction upon the respondents to initiate appropriate legal proceedings against the private respondents and to demolish the unauthorized and unlawful construction made by them on the property by encroaching the same situated at Vill-Kuliara, Mouza-Kuliara, P.S. Jangipara, Dist. Hooghly, Khatian No. 111/1 and 111/2, J.L. No. 4, Dag No. 701 or any portion thereof.

2. The petitioners' case is that they are the owners/co-sharers of the property situated at and comprised within Village-Kuliara, Mouza-Kuliara, P.S. Jangipara, Dist. Hooghly, Khatian No. 111/1, J.L. No. 4, Dag No. 702 measuring about 96 decimal/60 cottahs (approx) a little more or less, which is a water body/pond (hereinafter referred to as the said pond). **However, in the record of rights, the said pond has been shown to be recorded in the name of Goddess Manasha, allowing public users and the petitioners have been shown to be shebait of deity Manasha.**
3. Another property which is also owned by the petitioner nos. 1 to 4 is situated at and comprised within Village-Kuliara, Mouza-Kuliara, P.S. Jangipara, Dist. Hooghly, Khatian No. 111/1 and 111/2, J.L. No. 4, Dag No. 701, measuring about 12 decimal/7.27 cottahs (approx) a little more or less recorded as Bastu in the record of rights, wherein the name of Kachiram Santra, since deceased has been shown to be permissive occupier (hereinafter referred to as the 'said property'). **Petitioners are in possession of the said pond and also the said property, excepting a portion of the said property, which is being unlawfully occupied by the private respondent no. 8.** The present petition is regarding the unlawful act of unauthorized construction carried on by the private respondent no. 8 in a portion of the said property, resulting in deposit of mud and debris in the said pond, thereby infringing the legal and constitutional rights of the petitioners.
4. It is the further case of the petitioners that they are the owners and occupiers by way of inheritance and law of succession. **It is further**

stated by the petitioner that the respondent no. 8 is unlawfully encroaching the property in this case as the name of the deceased father of the respondent no. 8 has been shown as permissive occupier in the record of rights.

5. It is further stated that **on the death of his father, the name of the respondent no. 8 has been incorporated in the record of rights in respect of .03 decimal out of .06 decimals in respect of L.R. Khatian No. 111/2** without the consent of the petitioners by the other respondents unlawfully. A **title suit being TS 12/13** has been filed before the learned Civil Judge (Junior Division), 2nd Court, Serampore, Hooghly, for recovery of possession from the respondent no. 8 in respect of the said property.
6. It is the further case that the respondent no. 8 is illegally trying to fill up a portion of the pond and the petitioners had initiated a proceeding under Section 144(2) of the Cr.P.C. in the year 2017 wherein parties were directed to maintain status quo.
7. It is further submitted by the petitioners that the private respondent no. 8 is trying to make unauthorized construction on the said portion of the property without any sanction or permission from the local Gram Panchayat and, as such, the same is to be demolished.
8. It is further alleged that the respondent authorities are not acting on the representation of the petitioners.
9. It is now submitted that the respondent no. 4 being the Block Land and Land Reforms Officer, Jangipara, Dist. Hooghly, has submitted a report in the form of affidavit wherein it has been stated as follows :-

“That the respondent no. 8’s, construction over Plot No. 701 and 702 without any sanctioned plan, has been stopped since after knowing the order of the Hon’ble High Court.

*That **at present neither any construction** nor any preparation for making construction is made by the respondent no. 8 in the instant writ application.”*

10. Admittedly, there is a civil suit (T.S. 12/13) pending between the parties regarding the said encroachment and as there is no construction at present, the civil Court is the appropriate forum wherein the dispute is to be agitated and decided.
11. Considering the fact that prima facie the respondent no. 8 has been shown in possession of .03 decimal in the disputed property in the record of rights and also considering the report of the respondent no. 4 (BL & LRO) as noted above, this Court is not inclined to pass any order of demolition at this stage.
12. **The writ petition is accordingly dismissed.**
13. **Parties to pursue their remedy in view of the discussions made above before the civil Court.**
14. There will be no order as to costs.
15. All connected applications, if any, stand disposed of.
16. Interim order, if any, stands vacated.
17. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)