

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA No.20265 of 2019

With

CAN 2 of 2024

Syed Abul Basar

Vs

The State of West Bengal & Ors.

For the Petitioner

: Mr. Syed Shamsul Arefin.

For the State

**: Ms. Ipsita Banerjee,
Mr. Akash Dutta.**

Hearing concluded on

: 17.09.2024

Judgment on

: 26.09.2024

Shampa Dutt (Paul), J.:

1. The case of the writ petitioner is that he is the Secretary of the Peardanga Gorosthan Panchalan Committee, a body for maintenance and upkeepment of 'Kabarsthan' and other 'Pirsthan'.

2. The petitioner's case is that:-

".....Hazrat Syed Shah Isha Rizvi (R) came to India from Balkh at Iraq about 400 years ago who was the descendent of prophet Hazrat Mohammed(S) the holy prophet of Islam and permanently residing at Peardanga, District: Paschim Medinipur, for educational enlightment of the common people for such reason established a 'khanka' therein. After his demise his Mazar was constructed by the descendent of Hazrat and his disciple in plot No. 151 of Mouza – Peardanga and other plot No. 151 and 152 are used as graveyard for his descendants and with the permission of his descendants, some villagers also use some portion of those plots as graveyard....."

3. It is further stated that, the members of the Peardanga Gorosthan Panchalan Committee decided in its meeting dated 20.11.2009 for constructing a boundary wall through Govt. aid for the said 'Kabarsthan'.
4. The petitioner filed an application before the Block Development Officer, Chandrakona-II at Chandrakona, District: Paschim Medinipur for Govt. aid for the boundary wall of 'Kabarsthan' and an aid was sanctioned amounting to Rs. 18,49,751/-. The Secretary of the committee was directed to take primary steps to start the construction of the boundary wall.

5. After sanction of the said fund, the Secretary of Peardanga Gorosthan Panchalan Committee filed an application before the Board of Wakfs for permission to construct the boundary wall, but some difficulties arose and litigation started and ended before this Hon'ble High Court. On 20.07.2017 by an order the High Court directed inter alia, *"The District Magistrate should also release the requisite funds in accordance with law without undue delay to ensure **the repair and renovation work** that appear to be URGENTLY needed at the graveyard and Mazar"*.
6. **In compliance of the order of the High Court**, the District Magistrate, Paschim Medinipur has given charge to Block Development Officer, Chandrakona-II, **to renovate the graveyard** situated therein.
7. It is submitted that when the Learned Advocate for the petitioner filed an application under Section 6 of the Right to Information Act before the District Magistrate, Paschim Medinipur about the status and progress of work, **a report was received from the B.D.O., Chandrakona – II that some portion of the work has been (partly) done with an amount of Rs. 15,34,771/- and another Rs. 30,69,542/- is required for finishing the said work.**
8. It is thus stated that the B.D.O. did not take appropriate steps for completing the construction of the boundary wall and renovate the graveyard as directed by the Hon'ble High Court, as he has prayed for

sanction of money, after 2 (two) years of receiving of the order, i.e. on 04.06.2019.

9. Though Rs. 3,00,000/- is left for further construction of the boundary wall but the Block Development Officer stopped the construction of boundary wall for want of or sanction of money.
10. It is stated that the authorities concerned are thus neglecting to complete the construction of boundary wall.
11. On hearing the parties, the State was directed to file status reports from time to time, which were filed (most of them undated) by the concerned authorities.
12. **The relevant extract of the final (status) report filed is as follows:-**

“.....As per Departmental norms, fourth Call has been floted on 02.08.2024 vide this office memo no. 1256 dated 02.08.2024 which was matured on 20.08.2024. Three bidders have been participated in the bid, and after evaluation of financial bid, work order has been given on 23.08.2024 vide this office memo no. 1399 (photocopy enclosed as Annexure – I) in favour of M/s Mandal Construction of Kantagarh, Tilari, Garbeta, Paschim Medinipur as L1 bidder with direction to resume the Peardanga boundary wall immediately.

After receiving work order, the concerned agency has started the work of boundary wall of Peardange Kabarsthan (Copy of Some photographs enclosed), but to start the work, huge barriers have been created by the local people of another community.

*The proposed land for construction of boundary wall of Peardanga Kabarsthan (Police Station – Chandrakona, Mouza – Peardanga, J.L. No. 79, Plot No. 151 and 152) at Chandrakona-II Block has history dating back around 400 years. **A part of the land which is proposed to be surrounded by the boundary wall has been***

traditionally used by another local community to celebrate GAJAN and CHARAK festivals. Thousands of people from another community are coming at the time of work and blocking the work of boundary wall.

It is noticed that there is an apprehension that completion of boundary wall may lead to breach of peace in that area. Two Petitions of the local people of another community addressing to the Sub-Divisional Officer, Ghatal and Block Development Officer, Chandrakona – II (copy enclosed as Annexure II & III) have been submitted earlier regarding not to surround the area with boundary wall as they perform their religious rituals at that place.

Under the above circumstances the undersigned prays before the Hon'ble High Court, Calcutta for an order as deemed fit and proper so that the communal harmony of the area is not hampered and peace and order is maintained in the area.

*Enclosure : Annexure – I, II, III and some
Photographs of ongoing work status.*

Yours sincerely

Sd/-

**Block Development Officer,
Chandrakona – II, Paschim Medinipur.....”**

- 13.** Thus, on hearing the parties and considering the nature of the said status report of the Block Development Officer Chandrakona – II, Paschim Medinipur, the scope of objection by the petitioner does not arise, as it appears **that a part of the land (other than the graveyard) proposed to be surrounded by the boundary wall is being used by local communities of different faith and religion since last 400 years or more.**

14. The local authorities and their authorized agents are facing resistance from the local people and they apprehend **serious communal disturbance** in the area, if the boundary wall is constructed.
15. **It thus appears that the nature of the dispute is prima facie a civil dispute and is to be decided by a competent Civil Court having jurisdiction.**
16. The writ petition is accordingly disposed of with the direction that the writ petitioner is at liberty to approach the Civil Court for appropriate relief.
17. **WPA 20265 of 2019 is accordingly disposed of.**
18. All connected applications, if any, stand disposed of.
19. Interim order, if any, stands vacated.
20. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)