

27.11.2024
Ct. No. 2
Sl. No. 17
tbsr

WPA 24528 of 2023

With

CAN 1 of 2023

Sibasish Kumar & Anr.

Vs.

State of West Bengal & Ors.

Mr. Falguni Bandyopadhyay

Mrs. Sreetama Neogi

....for the petitioners

Mr. Chandi Charan De

Mr. Anirban Sarkar

....for the State

Mr. Sougata Mitra

Mr. Nikhil Gupta

Mr. Subhadeep Maitra

....for the respondent no. 4

Two affidavits of service, filed in court today, are taken on record.

Mr. Falguni Bandyopadhyay, learned counsel appears for the petitioners.

Mr. Chandi Charan De, learned counsel appears for the respondent nos. 1 to 3 and 5 & 6.

Mr. Nikhil Kumar Gupta, learned counsel appears for respondent no. 4.

At the outset Mr. Falguni Bandyopadhyay, learned counsel for the petitioners submits that he is not pressing this writ petition against by the private respondents, i.e. private respondent nos. 7 to 13.

Accordingly, this writ petition stands dismissed against the respondent nos. 7 to 13 and this order will have no effect or bearing upon the respondent nos. 7 to 13.

The petitioners complain of that on their own land the concerned Municipality has encroached and started digging the soil and has already created a pond. He further submits that the Municipal authority intends to construct a pukur ghat on the land of the petitioners. The land has never been acquired and the land still remains under the ownership of the petitioners.

Mr. Nikhil Kumar Gupta, learned counsel appearing for the respondent no. 4 has denied and disputed the submissions made on behalf of the petitioners. He further submits that there is no averment in the writ petition that the Municipal authority is digging soil or has created a pond and on the contrary the petitioners pleaded that those alleged illegal acts have been done at the behest of the private respondents.

Learned counsel for the petitioners has denied the submissions for respondent no. 4 by drawing attention of this Court at paragraph 6 and 7 to the petition.

Be that as it may, the respondent no. 5 upon prior notice to the petitioners and respondent no. 4 shall cause a physical inspection of the alleged encroachment and the subject land and then shall file a report before the respondent no. 3. Copy of the report shall also be served upon the petitioners.

This exercise shall be carried out by the respondent no. 5 positively within a period of **three weeks** from the date of communication of this order.

After receiving the report from the respondent no. 5, the respondent no. 3 after issuing a prior hearing notice of at least **seven days** to the petitioners and the respondent no. 4 and after granting them an opportunity of hearing in presence of the respondent no. 5 shall dispose of the representation of the petitioner dated **September 18, 2023, Annexure P-7 at page 61** to the writ petition by passing a reasoned order.

The entire exercise shall be carried out and completed by the respondent no. 3 positively within a period of **six weeks** from the date of receiving the report from the respondent no. 5. The reasoned order shall be communicated to the petitioners and the respondent no. 5 positively within a further period of **two weeks** from the date of the said reasoned order to be passed.

In the event, the reasoned order confirms the allegations of the petitioners then the respondent no. 3 and/or any other appropriate State authority shall take all necessary and consequential steps to give an immediate effect to the said reasoned order in accordance with law but positively within a period of **six weeks** from the date of the said reasoned order to be passed.

It is made clear that this Court has not gone into the rival contentions of the petitioners and respondent no. 4 and they shall be at liberty to urge whatever points they wish to urge by relying upon whatever records and documents they wish to rely upon before the respondent no. 3 but the same shall not travel beyond the scope of the said representation dated **September 18, 2023 at page 61** to the writ petition.

It is made clear that this order shall not create any right or equity in favour of the petitioners or in favour of the respondent No. 4 and the concerned Municipality, if they do not succeed to their respective contentions strictly in accordance with law before the respondent no. 3.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions, this writ petition, **WPA 24528 of 2023** and the connected application being **CAN 1 of 2023** stand **disposed of**, without any order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)