

13.05.2024
Item No.21
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IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

WPA/592/2024

PADMA DAS & ORS.
VS
THE STATE OF WEST BENGAL & ORS.

Mr. Debajit Kundu
..for the petitioner.

Mr. Hirak Barman,
Mr. Sumit Kumar
..for the State

This is the second round of litigation in respect of land belonging to the petitioners on the allegation that the same has been utilized by the North Bengal Development Department (in short NBDD) for construction of a bandh on river Raidak without due process of law and compensation. The petitioners say that their predecessor-in-interest was the owner of LR plot nos.5405, 5411 and 5412. These plots of land, according to the petitioners, were never subjected to any inundation due to flooding.

The petitioners say that portions of these plots have been utilized for the construction of the bandh. In a previous writ petition being WPA 189 of 2023 by an order dated 1st March, 2023 the District Magistrate and Collector, Cooch Behar was directed

to verify the grievance of the petitioners and give a specific finding. The operative portion of the order is set out hereunder for ready reference :

“In view of the above, the instant writ petition is disposed of by directing the District Magistrate and Collector, Cooch Behar to verify the grievance of the petitioners and come to a specific finding as to whether the private land of the petitioners was utilized for construction of irrigation bandh by the North Bengal Development Authority as alleged.

The District Magistrate and Collector, Cooch Behar shall afford an opportunity of hearing to the representative(s) of the petitioners and to the North Bengal Development Authority to ascertain as to whether or not the private land of the petitioners were utilized by the Government without payment of compensation in accordance with law.

The aforesaid exercise shall be conducted at the earliest and positively concluded by 12 weeks from the date of communication of this order.

A reasoned order shall be passed and communicated to the petitioners immediately thereafter.

It is made clear that this Court has not gone into the merit of the claim of the petitioners and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioners.

Learned advocate for the petitioners is directed to forward a copy of the legal representation dated 2nd December, 2022 and copy of the record of rights annexed

at pages 20 to 23 of the writ petition at the time of communicating the order of the Court.”

The learned District Magistrate after issuing notices of hearing to the petitioners heard the matter in a detailed manner in the presence of the petitioners. The learned District Magistrate has come to a conclusion that no portion of plot of land under LR plot nos.5411 and 5412 in Mouza Andaran Fulbari, J. L. No.71 belonging to Anil Das, the predecessor-in-interest of the petitioners have been used and utilized. The said plot of lands have been grasped by the flooding river water and are lost for such reason and have not utilized for the construction of bandh. Although, the petitioners say that they were not afforded a proper opportunity but the order clearly reveals that they were present. The petitioners have not been able to produce any document in support of their contention that the plot of land bearing no.5411 and 5412 had not been inundated by flood waters utilized for construction of the bandh. The petitioners say that the petitioners were not given notice of holding of a joint survey, as a consequence whereof the petitioners could not raise their objection at the time of actual field survey. This fact is also not reflected in any part or portion of the order by way of petitioners' submission. In any event, the petitioners could have produced

documents to support their contention and objected to the so called holding of joint survey immediately after the same was conducted. The petitioners have not taken such course. Before the learned District Magistrate and Collector, Cooch Behar, the petitioner has not been able to substantiate their case.

That apart and in any event, the issues raised by the petitioners in this writ petition while challenging the order of the learned District Magistrate are purely factual in nature which cannot be gone into considering the limited scope of judicial review exercised under Article 226 of the Constitution of India.

In the aforesaid facts and circumstances, I do not find any reason to interfere with the order passed by the learned District Magistrate and Collector, Cooch Behar dated 23rd May, 2023 which is under challenge in this writ petition.

The writ petition, therefore, fails and is accordingly dismissed, however, without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(ARINDAM MUKHERJEE, J.)