

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

W.P.A. No. 364 of 2020

With

CAN 1 of 2025

Mr. Tirthankar Mazumdar

-Versus-

The State of West Bengal & Ors.

Petitioner (In person) : Mr. Tirthankar Mazumdar.

For the State : Mr. Tarak Karan, Adv.

Heard On : 30.06.2025

Judgement On : 30.06.2025

Tirthankar Ghosh, J. :

Petitioner approached this Court by invoking the jurisdiction under Article 226 of the Constitution of India with the following prayers :-

a) A writ in the nature of Mandamus commanding the respondent police authorities concerned and each one of them to take all immediate and effective steps against the respondent nos. 6 & 7 hereof as also against all their rowdy associates involved in the said matter of law-breaking as aforementioned and as it has been

detailed in the so many representations/written complaints made by the instant petitioner to the concerned police authorities from time to time all of which have been made necessary annexure to the instant writ petition as Annexure P/5 collectively thereof.

b) A writ in the nature of Mandamus commending the respondent nos. 6 & 7 to this writ petition as also their agents and associates to demolish, remove and wipe out all the newly raised structures of the Respondent nos. 6 & 7 as also their men or agents or associates on the said land/lands in reference forthwith of course, at the cost of the said Respondents Nos. 6 & 7 as well as their men or agents or associates;

c) A writ in the nature of Mandamus commending the respondents no. 6 & 7 to this writ petition as also their agents and associates to refrain from disturbing the lawful possession of the petitioner in respect of the lands in reference lawfully held by him and his other co-sharers and which have been particularly described in paragraph no. 2 of the instant writ petition as also from raising further structure or from remodeling, rehearing or renovating the illegally raised existing structures as also from planting or cultivating bamboos and big or large sized trees on the said lands in any manner whatsoever till disposal of the instant writ petition or otherwise in view of the solemn order to be passed on the instant writ petition;

- d)** A writ in the nature of Certiorari directing the Respondent authorities concerned to certify and transmit the records of the case to this Hon'ble Court so that conscionable justice may be administered by way of passing appropriate order or direction;
- e)** Rule NISI in terms of prayers (a), (b), (c) & (d) hereinabove;
- f)** Interim order or orders in terms of prayers (a), (b) & (c) hereinabove;
- g)** Ad-interim order of injunction in terms of prayer (c) hereinabove against respondent nos. 6 & 7 as well as their rowdy men or agents or associates concerned till the disposal of the Rule;
- h)** Costs of and incidental to the instant writ petition;
- i)** Any other order or direction as it would deem fit and proper to your Lordships.

The facts of the present case are to the effect that the present petitioner feeling helpless in respect of the atrocities inflicted by one Md. Sahidul Haque (respondent no. 6) and his associate for grabbing his ancestral property approached the administrative authorities, the Superior Police Authorities as well as the local Madhyamgram Police Station, but the same did not yield any result, as the private respondents by taking the law in their own hands stacked building materials and also demolished the temporary bamboo structures as well as the bamboo storage/banana trees and harmed the fishes which were available in the pond.

Petitioner and one Lila Sarkar thereafter filed Title Suit No. 459/2019 before the learned Civil Judge (Senior Division), 1st Court, Barasat with prayers for ad-interim injunction before the civil court for the purpose of restraining the defendants from disturbing the lawful possession of the plaintiffs (which included the petitioner herein).

Petitioner also preferred an application under section 156(3) Cr.P.C. before the learned ACJM, Barasat and on the basis of the order passed, specific case being Madhyamgram PS Case No. 742/2021 dated 23.11.2021 was registered for investigation under the relevant provisions of Cheating and Forgery against the respondent no. 6 namely, Sahidul Haque and respondent no. 7, namely, Selima Sultana. As the writ petition was filed in the year 2020 reports were called for from the police/state authorities. The Deputy Superintendent of Police, Barasat Police District submitted a report which reflects that TS No. 459/2019 is pending before the Civil Judge (Senior Division), 1st Court, Barasat, as such the police authorities on their assessment of materials so collected in course of investigation, on or about 12.11.2024 submitted final report before the jurisdictional court.

The petitioner appearing in-person has submitted supplementary affidavit first to establish his right and title over the property and secondly to substantiate that the private respondents are encroachers who have grabbed the land by force and deceitful means. Reference has been made by the petitioner to number of communications which have been made at the relevant point of time as also in the subsequent dates wherein the atrocities and unlawful assembly which were engineered at the behest of respondent

no. 6 was brought to the notice of the said authorities and which failed to yield any result.

On the other hand, Mr. Karan, learned advocate appearing for the State submitted that the police authorities on completion of investigation has submitted final report which is the closure report in respect of Madhyamgram PS Case No. 742/2021.

I have considered the submissions advanced by the petitioner as well as the learned advocate appearing on behalf of the State. There are two parts of the litigation, relating to the establishment of right by the petitioner for which the petitioner has already approached the civil court. However, before establishing his right the communications of the petitioner addressed to the administrative authorities on the one hand accuses the respondents for encroachment of the property by use of force thereby disturbing his peaceful possession and also forging the title deed of the property thereby cheating him, as well as the other lawful owners. As such the factual foundation laid down by the petitioner in the writ petition leads to a mixed question of fact and law which cannot be decided only by way of exchange of affidavits and proper evidence is to be adduced before the civil court to establish his right. As TS No. 459/2019 is pending before the civil court, this court as such would not enter into the said domain.

The second part is regarding the criminal case in respect of Madhyamgram PS Case No. 742/2021 wherein the police authorities have submitted their closure report. Surprisingly the State is unable to show any

notice to have been issued upon the petitioner after submission of this closure report, although he has set the criminal law into motion for availing his right to challenge the conclusion arrived by the Investigating authorities in respect of the aforesaid criminal case.

The Hon'ble Supreme Court way back in *Bhagwant Singh vs. Commissioner of Police and Another* (1985) 2 SCC 537 settled the ratio in cases where the final report or closure report is filed by the investigating agency and the right of the informant/complainant who has set the law into motion. Reference is made to paragraphs 2, 3 & 4 which is relevant for the present case and reads as follows :-

“2. It is necessary to refer to a few provisions of the Code of Criminal Procedure, 1973 in order to arrive at a proper determination of this question. Chapter XII of the Code of Criminal Procedure, 1973 deals with information to the police and their powers to investigate. Sub-section (1) of Section 154 provides that every information relating to the commission of a cognizable offence, if given orally to an officer-in-charge of a police station, shall be reduced in writing by him or under his direction and be read over to the informant and every such information, whether given in writing or reduced to writing, shall be signed by the person giving it and sub-section (2) of that section requires that a copy of such information shall be given forthwith, free of cost, to the informant. Section 156 sub-section (1) vests in the officer-in-charge of a police station the power to investigate any cognizable case without the order of a Magistrate and sub-section (3) of that section authorises the Magistrate empowered under Section 190 to order an investigation as mentioned in sub-section (1) of that section. Section 157 sub-section (1) lays down that if, from information received or

otherwise an officer-in-charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offender. But there are two provisos to this sub-section. Proviso (b) enacts that if it appears to the officer-in-charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case, but in such a case, sub-section (2) of Section 157 requires that the officer shall forthwith notify to the informant the fact that he will not investigate the case or cause it to be investigated. What the officer-in-charge of a police station is required to do on completion of the investigation is set out in Section 173. Sub-section (2)(i) of Section 173 provides that as soon as investigation is completed, the officer-in-charge of a police station shall forward to the Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government setting out various particulars including whether, in the opinion of the officer, any offence appears to have been committed and if so, by whom. Sub-section (2)(ii) of Section 173 states that the officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given. Section 190 sub-section (1) then proceeds to enact that any Magistrate of the First Class and any Magistrate of the Second Class specially empowered in this behalf under sub-section (2) may take cognizance of any offence: (a) upon receiving a complaint of facts which constitute such offence or (b) upon a police report of such facts or (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. We are concerned in this case only with clause (b),

because the question we are examining here is whether the Magistrate is bound to issue notice to the first informant or to the injured or to any relative of the deceased when he is considering the police report submitted under Section 173 sub-section (2).

3. *It will be seen from the provisions to which we have referred in the preceding paragraph that when an informant lodges the first information report with the officer-in-charge of a police station, he does not fade away with the lodging of the first information report. He is very much concerned with what action is initiated by the officer-in-charge of the police station on the basis of the first information report lodged by him. No sooner he lodges the first information report, a copy of it has to be supplied to him, free of cost, under sub-section (2) of Section 154. If, notwithstanding the first information report, the officer-in-charge of a police station decides not to investigate the case on the view that there is no sufficient ground for entering on an investigation, he is required under sub-section (2) of Section 157 to notify to the informant the fact that he is not going to investigate the case or cause it to be investigated. Then again, the officer-in-charge of a police station is obligated under sub-section (2)(ii) of Section 173 to communicate the action taken by him to the informant and the report forwarded by him to the Magistrate under sub-section (2)(i) has therefore to be supplied by him to the informant. The question immediately arises as to why action taken by the officer-in-charge of a police station on the first information report is required to be communicated and the report forwarded to the Magistrate under sub-section (2)(i) of Section 173 required to be supplied to the informant. Obviously, the reason is that the informant who sets the machinery of investigation into motion by filing the first information report must know what is the result of the investigation initiated on the basis of the first information report. The informant having taken the initiative in lodging the first information report with a view to initiating investigation by the police*

for the purpose of ascertaining whether any offence has been committed and, if so, by whom, is vitally interested in the result of the investigation and hence the law requires that the action taken by the officer-in-charge of a police station on the first information report should be communicated to him and the report forwarded by such officer to the Magistrate under sub-section (2)(i) of Section 173 should also be supplied to him.

4. *Now, when the report forwarded by the officer-in-charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding*

further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the first information report, the informant would certainly be prejudiced because the first information report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the first information report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the first information report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer-in-charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the first

information report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2)(i) of Section 173 and if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.”

The said principle in criminal law is still followed in the criminal courts in letter and spirit.

Having considered that no notice was served upon the petitioner although on or about 12.11.2024 closure report /final report was submitted by the investigating agency in connection with Madhyamgram PS Case No. 742/2021, I am of the view that if any subsequent steps have been taken pursuant to the report being submitted before the jurisdictional Magistrate, in that case, any order passed by the learned Magistrate should be set aside. Petitioner would as a matter of right, if he is so advised, file his application under section 173(8) of the Code of Criminal Procedure.

Learned Magistrate would issue notice upon the State and thereafter on an assessment of the materials place before him pass necessary orders as he deems fit and proper.

With the aforesaid observations WPA 364 of 2020 is disposed of.

Pending applications, if any, be consequently disposed of.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

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

(Tirthankar Ghosh, J.)