

Item No.15
03.04.2025
Court. No. 236
GB

W.P.A. 6272 of 2025

Pomi Khatun & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Habibur Rahaman,
Mr. Archishman Singh

...for the Petitioners.

Mr. Soumitra Bandopadhyay,
Mr. Ram Chandra Guchhait

...for the State.

Md. Habiz Ali,
Mr. Debojyoti De

...for the Respondent No.4.

1. By filing the instant writ petition the writ petitioners have prayed for issuance of appropriate writ/writs against the respondent authorities for cancellation and/or rescinding the tender notice dated December 14, 2024 with a further prayer for issuance of a writ of prohibition against the respondent authorities from making any construction over the property of the writ petitioners.
2. In course of hearing learned advocate for the writ petitioners at the very outset draws attention of this Court to page no.22, being a copy of the information slip in respect of plot no.639 in Mouza – Chanchoa, District – Murshidabad as downloaded from the website of the Government of West Bengal. It is submitted that from the said information it would reveal that in respect of plot no.639, the writ petitioners are possessing certain quantities of land particulars of which have been mentioned in the said

information slip. It is contended further on behalf of the writ petitioners that since the respondent authorities have made an attempt to encroach the portions of the land of the writ petitioners in the said plot of land and also made an attempt to dispossess the writ petitioners therefrom, the writ petitioners filed Title Suit No.313 of 2024 before the learned Civil Judge (Junior Division), 1st Court, Kandi, Murshidabad with a prayer for decree for declaration, permanent injunction and other ancillary reliefs.

3. It is submitted that in the said suit an application for temporary injunction under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure was moved for passing an *ad interim* order of injunction whereupon the said trial court directed the defendants to show cause as to why the injunction application as filed by the writ petitioners would not be allowed. It is contended further that in the said suit the defendants being the respondent authorities herein entered their appearance as would reveal from the copy of the information slip at page no.38 of the instant writ petition.
4. It is submitted further on behalf of the writ petitioners that the respondent authorities even during the pendency of the said suit has floated a tender dated December 24, 2024 for construction of a community hall over the landed property of the writ petitioners. It is, thus, submitted that since the action of the

respondent authorities violates the constitutional right of the writ petitioners as enshrined under Article 300A of the Constitution of India, appropriate relief/reliefs may be granted to the writ petitioners in terms of the clause made in the instant writ petition.

5. Per contra, learned advocate appearing on behalf of the respondent authorities submits before this Court that the subject matter of the instant writ petition is also the subject matter of litigation in Title Suit No.313 of 2024 as filed by the writ petitioners before the learned Civil Judge (Junior Division), 1st Court, Kandi, Murshidabad. It is, thus, submitted that since the writ petitioners have already availed an alternative remedy by approaching common law forum, this Court ought not to have entertained the prayer as made by the writ petitioners.
6. On careful consideration of the entire materials as placed before this Court including the copy of the plaint as filed by the instant writ petitioners before the jurisdictional Civil Judge (Junior Division), it appears to this Court that alleging an illegal action, namely, construction of a community hall the writ petitioners have already filed a title suit for declaration and permanent injunction restraining the respondent authorities herein (defendants in the said suit) from making any construction of community hall over the schedule mentioned property of the said plaint which according to the writ petitioners belongs to them.

7. It further appears to this Court that in the said suit the plaintiffs who are the writ petitioners before this Court have filed an application for temporary injunction with a further prayer for *ad interim* order of injunction which was however not considered favourably by the said trial court, though it has been contended on behalf of the writ petitioners at the time of hearing that since the tender was floated on December 24, 2024, that is, after filing of the said Title Suit No.313 of 2024, on account of the subsequent events the prayers as made in the instant writ petition may be considered favourably.
8. It appears to this Court that on account of alleged action of the respondents herein, the writ petitioners have already filed Title Suit No.313 of 2024 before the jurisdictional Civil Judge (Junior Division) praying for a decree for declaration and for permanent injunction restraining the respondent authorities herein from making any construction of community hall over the schedule mentioned property of the said plaint. It, thus, appears to this Court that the writ petitioners have already availed the alternative remedy. It further appears to this Court that the argument of the learned advocate for the writ petitioners that on account of the subsequent event, that is, publication of tender dated December 24, 2024 the instant writ petition is very much maintainable, does not appear to this Court much convincing in view of the fact that the Code of

Civil Procedure clearly mandates that a jurisdictional civil court can also very well take appropriate action on account of subsequent event under Section 94 of the Code of Civil Procedure.

9. In view of the discussion made hereinabove and in view of the fact that the writ petitioners have already availed alternative remedy, this Court holds that the instant writ petition cannot be allowed to be continued and the same is thus dismissed.
10. Before parting with, liberty is granted to the writ petitioners to approach the learned trial court with the appropriate prayer if so advised.
11. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Partha Sarathi Sen, J.)