

06.08.2025

13
Ct.No.7
sdas

WPA No. 22876 of 2016

Kashinath Kulavi
Vs.
The State of West Bengal & Ors.

Mr. Shyamal Chakraborty
Ms. Manju Jaiswal
.....for the petitioner

Mr. Shamim Ul Bari
..... for the State

Mr. Udaynarayan Betal
.... for the respondent Nos.
7,11,12,14, & 15

The present writ petition has been filed seeking a direction upon the concerned respondents to take appropriate measures to protect the petitioner's guard wall, which serves as a protective barrier for the petitioner's residential building.

Mr. Chakraborty, learned Advocate appearing for the petitioner, submits that a piece of land measuring 10 decimals, comprising Plot No. 736 under Khatian No. 186, situated in Mouza – Goura, District – Paschim Medinipur, belongs to the petitioner. Upon obtaining sanction of the building plan and the requisite permission from the local Panchayat, the petitioner constructed a dwelling house on the eastern side of the said plot, strictly in accordance with the instructions

contained in the sanctioned plan and the specifications set out therein.

He further submits that there is a pond located on Plot No. 737 of the said Mouza, adjacent to the petitioner's dwelling house. In February 2016, the concerned respondents commenced excavation work in the said pond under the Mahatma Gandhi National Rural Employment Guarantee Scheme (hereinafter referred to as "the Scheme"), including the removal of earth from the area adjoining the petitioner's guard wall, which had been providing essential lateral support to the structure. The removal of such lateral support has significantly weakened the guard wall, posing an imminent risk of collapse and the potential for serious damage to the petitioner's dwelling house. Accordingly, he prays for an appropriate direction upon the concerned respondents to take necessary and adequate measures to ensure the protection of the petitioner's guard wall.

Mr. Betal, learned Advocate appearing for respondent nos. 7, 11, 12, 14, and 15, vehemently opposes the contentions advanced by Mr. Chakraborty. He draws the Court's attention to a Circular dated 08.10.2007 issued by the Department of Environment, Government of West Bengal, and submits that the said Department has imposed a prohibition on the construction of any boundary brick wall around ponds

within the State. It has also expressly prohibited any encroachment upon the embankments of such ponds. He further contends that the erection of any boundary wall, or the placement of earth adjacent to the petitioner's guard wall, would lead to the filling up of the pond with earth or other materials, which is impermissible under the prevailing environmental laws.

Mr. Bari, learned Advocate appearing for the State, submits that, in order to ensure better preservation of the waterbody, earth was removed from the pond situated at Plot No. 737 under the Scheme. He further submits that no earth was removed from the petitioner's property.

Heard the learned Advocates representing the respective parties and perused the materials on record.

Undoubtedly, Plot No. 736 is owned by the petitioner. The petitioner constructed a dwelling house on the said plot and, in order to protect it, also erected a guard wall adjacent to the pond located on Plot No. 737—well before any steps were taken to preserve the pond under the Scheme. Mr. Chakraborty contends that the earth which was removed served as lateral support to the guard wall, and that its removal by personnel engaged by the respondents has significantly weakened the structure, posing an imminent risk of collapse at any moment.

The records reveal that this Court had earlier occasion to consider the same issue in W.P. No. 38229(W) of 2016, which was disposed of by a coordinate Bench of this Court by an order dated 09.06.2016. In compliance with the said order, the concerned Block Development Officer (BDO) sought a report from the Assistant Engineer. Upon consideration of the report, the BDO, by an order dated 01.09.2016, concluded that the pond in question was not newly excavated, as it already existed. The pond was re-excavated under the Scheme with the petitioner's consent, and the said re-excavation work was carried out at a distance of approximately 25 to 30 feet from the petitioner's dwelling house.

However, the order recorded that the Assistant Engineer was unable to measure the distance between the guard wall and the starting point of the excavation at that time. Ultimately, the BDO found no merit in the petitioner's claim and, accordingly, declined to accept it. Aggrieved by the said order dated 01.09.2016, the petitioner has preferred the present writ petition. Notably, in the same order, the BDO observed that the pond was full of water, and further noted that, during the dry season, some soil could be placed to protect the petitioner's guard wall. In view of the same, the following direction was issued to the Prodhan, Goura Gram Panchayat:

“And in this case Pradhan, Goura Gram Panchayat is directed if possible as the pond is full of water now during dry season some soil may be staged to protect the petitioner’s dwelling house”.

Therefore, from the order of the concerned BDO, it appears that the earth which had been serving as lateral support to the petitioner’s guard wall was either removed or subsequently washed away during the monsoon season. Consequently, the Pradhan of Goura Gram Panchayat was directed to “stage some soil to protect the petitioner’s dwelling house.

Taking note of the stand adopted by the concerned BDO and in view of the facts and circumstances of the case, respondent No. 4, Pradhan, Goura Gram Panchayat, is hereby directed to stage an adequate quantity of soil to protect the petitioner’s guard wall and dwelling house, in accordance with the order of the BDO dated 1st September 2016.

Such work shall be completed within 31st December, 2025.

The Pradhan, Goura Gram Panchayat, is directed to ensure that the work is carried out solely for the purpose of protecting the petitioner’s dwelling house and guard wall and shall not result in any reduction in the size of the pond adjacent to the petitioner’s dwelling house.

With these observations and order the writ petitioner is, thus, disposed of.

There shall be no order as to costs.

(Partha Sarathi Chatterjee, J.)