

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

WPA 14216 of 2023

With

CAN 1 of 2024

Gourmohon Giri

Versus

The State of West Bengal and Others

For the Petitioner : Mr. D. Kundu, Adv.

For the State : Ms. Mitali Mukherjee, Adv.
Ms. Kakali Naskar, Adv.

For the Respondent Nos. 8 to 10

: Mr. Samiran Giri, Adv.

Heard on : 13.11.2024

Judgment on : 27.11.2024

Ajay Kumar Gupta, J:

1. The Writ Petitioner inter alia alleged that the private Respondent Nos. 8 to 10 have illegally constructed a building over the land of Irrigation Department comprising Dag Nos. 1320 and 1321 without having any authority or sanction plan.

2. The private Respondents Nos. 8 to 10 have not only illegally constructed the building but also disturbed the free egress and ingress of the writ petitioner to his residential house. The petitioner had purchased a plot of land measuring an area about 26 Decimals lying and situated at Mouza – Boga, Sabek Kh. No. 123/1, Hal Kh. No. 596, Dag No. 1315 under Police Station – Khejuri, District – Purba Medinipur by way of a purchase through a Deed of Sale in the year 2011. The writ petitioner further purchased another plot of land measuring an area about 5 Decimals under Dag No. 1322 adjacent to Dag No. 1315. The classification of both the land is Bastu and both the lands are situated just beside the Khal and land of Irrigation Department under Dag Nos. 1319, 1320 and 1321.

3. The petitioner has constructed a residential building on his land after obtaining a sanction plan from the appropriate authority and in the said residential building, his mother, wife and daughter

and other family members are residing. However, due to disturbance caused by the private respondents nos. 8 to 10 by their illegal construction, the writ petitioner being the Ex-Soldier of Indian Army made a complaint on 20.01.2022 to the concerned authorities stating, *inter alia*, that the private respondents are forcibly and illegally without having any authority or sanction plan from the Panchayat Authority, constructed Pucca structure over the classification of land Jola and Doba of the Irrigation Department but respondent authorities, till date, did not take any steps for removal and/or demolition of the said illegal and unauthorised construction over the Jola and Doba land comprising Dag Nos. 1320 and 1321 under Mouza - Boga, under P.S. - Khejuri, District - Purba Medinipur..

4. In addition to petitioner's complaint, other villagers also made representations before the respondent authorities narrating the facts that the private respondents have forcibly and illegally constructed a building without having any sanction plan from the Panchayat Authority and thereby disturbing the free ingress and egress of the petitioner's house but no action has been taken by the State respondents.

5. Again on 07.05.2023, the petitioner made a representation before the Pradhan of Gram Panchayat and the Executive Engineer, Irrigation Department stating therein with regard to illegal construction by the private respondents over the Irrigation Department's land but no steps have been taken. Having no other alternative, the writ petitioner has approached before this Court by filing this instant writ petition with prayers *inter alia*, as under: -

“a) A writ of or in the nature of Mandamus do issue commanding the respondents, their agents, servants, subordinates, employees and/or assignees particularly the respondent no. 6 and 7 herein to show cause as to why the appropriate steps should not be taken against the illegal and unauthorized construction constructed by the private respondents over Doba (khal/cannel) on Dag Nos. 1320 and 1321 forthwith.

b) A writ of or in the nature of Mandamus do issue commanding the respondents, their agents, servants, subordinates, employees and/or assignees particularly the respondent nos. 3, 6 and 7 to show cause as to why the illegal and unauthorized construction without having any sanction plan should not be demolished forthwith.

c) A writ of or in the nature of Mandamus do issue commanding the respondents, their agents, servants,

subordinates, employees and/or assignees to consider the representation made by the petitioner and pass reasoned order in accordance with law.

d) A writ of or in the nature of Certiorari do issue calling upon the respondents and each of them to certify and transmit to this court the original records of the case before this Hon'ble Court so that conscionable justice may rendered.

e) A writ of or in the nature of Prohibition do issue prohibiting upon the respondents and each of them either by themselves or through their men, agents, assigns, subordinates from exercising further not warranted under the statute.

f) Rule of NISI in terms of prayers above.

g) An interim order of injunction restraining the private respondents from making further construction over the irrigation department's Doba (khal/cannel) under Dag Nos. 1320 and 1321 till the disposal of the writ application.

h) Ad-interim order directing the police personnel of the Talpatighat Coastal Police Station to render adequate police help to the petitioner as there is life threat of the petitioner."

6. During pendency of this writ petition, the writ petitioner has filed supplementary affidavit stating therein that the writ petitioner had filed a suit being Title Suit No. 16 of 2021 for an easement right against the private respondents with regard to the Plot No. 1316 as there is no other way to access the road to enter the house of the petitioner. In the said suit, the Irrigation Department is also one of the parties. In the said suit, the private respondents filed application for appointment of the surveyor/commissioner. The said application was allowed and Commissioner was appointed by the Learned Court for making inspection of the suit land. The Commissioner filed report before the Learned Court indicating that there is one storied building constructed by the private respondents on the plot Nos. 1320 and 1321, which belongs to Irrigation Department, Government of West Bengal.

7. On 26.09.2023, the Sub-Divisional Officer provided a copy of the Field Verification Report along with sketch map of the concerned Block Land and Land Reforms Officer indicating therein that the unauthorized construction has been made on the Plot Nos. 1320 and 1321 by the private respondents on the Government land as such,

the Writ Petitioner prays for a direction upon the respondents, so that illegal construction may be removed or demolished immediately.

8. On the other hand, the private Respondent Nos. 8 to 10 filed their affidavit-in-opposition denying and disputing all the allegations made by the writ petitioner against the private respondents. However, it is admitted that they have constructed one storied building over the Plot No. 1316 but some portions of the building encroached/fallen within some area of the Plot Nos. 1320 and 1321 belongs to Irrigation Department. Respondents have already applied for, by filing one application for long term lease of the said encroached area before the Authority.

9. It was submitted by the learned counsel appearing on behalf of the private respondent nos. 8 to 10 that this writ petition is not at all maintainable as two parallel proceedings cannot be initiated simultaneously on the self-same allegation or same issue. If any grievances exist to the writ petitioner, he may ventilate before the Civil Court where the title suit is pending. In the said Title Suit, B.L. & L.R.O., Khejuri - II including the Irrigation Department are also the parties. He has placed a reliance of an unreported judgment passed

by a Co-ordinate Bench in the case of **Krishna Kamal Goswami & Anr. Vs. State of West Bengal & Ors.** in **WP 11749 (W) of 2012** to support of his contention.

10. It was further submitted that the petitioner has no locus standi to lodge complaint before the Government Authorities against the private respondents being private individual even if, encroachment made by the private respondents of the land of Irrigation Department because the petitioner has already filed a Title Suit before the Civil Court. The Learned Civil Court has already passed interim order on 03.03.2022, *inter alia*, as under: -

“that the application under Order XXXIX Rule 1 & 2 of CPC filed by the plaintiffs no. 1 and 2 on 16.01.2021 is allowed on contest with a direction upon both the parties (plaintiff and the defendants) that they should restrain from changing the nature and character of the ‘Ka’ and ‘ka/ 1’ scheduled suit properties by any form of construction and further not to create any third party interest in such ‘Ka’ scheduled suit property and further not to dispossess each other from such ‘ka’ scheduled suit property till the disposal of this suit.

The Ld. Advocate Commissioner is directed to file the photographs of the commission work otherwise the commission report shall not be accepted.”

11. Considering the arguments of the rival parties and upon perusal of the record, it appears that it is an admitted fact that the Private Respondent Nos. 8 to 10 have made construction on their Plot No. 1316 encroaching some portion of the land being Dag Nos. 1320 and 1321 under Mouza - Boga, under P.S. - Khejuri, District – Purba Medinipur of the Irrigation Department, Government of West Bengal. The classification of the land appears from the record of right that same is Jola and Doba. No any construction can be made in the Jola and Doba land without specific permission and changing the nature of the land of the appropriate authority. However, since the land belongs to Irrigation Department, no any documentary evidence transpires from the record that any permission or sanction has been obtained by the private respondent nos. 8 to 10 for such illegal encroachment and/or unauthorised construction over the land of Irrigation Department.

12. A responsible citizen or individual or affected party can always approach the concerned authorities alleging violation of law by illegal encroachment and construction on the Government's land and the Authority concerned is duty bound to take cognizance of such

complaint and acts in accordance with law. Thus, the writ petitioner has locus standi to lodge complaint against the Private Respondents.

13. It appears from the materials available in the record that a proceeding has already been initiated against the Private Respondent Nos. 8 to 10 by the Sub-Divisional Officer, Etamogra Irrigation Sub-Division, Etamogra, Purba Medinipur, Pin – 721628 and a notice was issued on 28.08.2023 to the private respondent nos. 8 to 10 directing them to vacate the land of the Irrigation Department and also directed the private respondents to demolish the unauthorized construction by drawing a proceeding under West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962. Thereafter on 31.08.2023, again a correction notice was issued by the Sub-Divisional Officer.

14. The private respondents had challenged the said notices dated 28.08.2023 and 31.08.2023 by filing a writ application being WPA No. 21734 of 2023 before this Hon'ble High Court at Calcutta. The said writ application came up for hearing on 24.01.2024 before His Lordship the then Hon'ble Justice Md. Nizamuddin. After hearing all the parties, His Lordship was pleased to dismiss the said writ

application. Even after dismissal of the said Writ Petition, the Private Respondent Nos. 8 to 10 have not challenged the said dismissal order before any higher forum as such, aforesaid order is still in force.

15. Therefore, the purpose of justice would be sub-served, if the Sub-Divisional Officer, Etamogra Irrigation Sub-Division (I & WD), Etamogra, Purba Medinipur is directed to take appropriate steps against the Private Respondent Nos. 8 to 10 after affording proper opportunity of the hearing to them as well as necessary parties strictly in accordance with law within eight weeks from the date of communication of this Judgment and Order keeping in mind the pendency of the Title Suit No. 16 of 2021 in view of the notices dated 28.08.2023 and 31.08.2023 issued under West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962. So, that illegal construction made in Jola and Doba land comprising Dag No. 1320 and 1321 under Mouza - Boga, under P.S. - Khejuri, District – Purba Medinipur belongs to Irrigation Department, Government of West Bengal shall be removed and/or demolished.

16. Aforesaid judgment relied by the private respondent nos. 8 to 10 is not applicable in the present case as the facts and

circumstances of this case are different. In the said case, a report of the Executive Engineer of PWD, Kalyani Construction Division was submitted along with affidavit indicating therein that free ingress and egress from public road to the premises of the writ petitioner was not obstructed.

17. Consequently, the writ petition being No. **WPA 14216 of 2023** is, thus, disposed of without order as to costs. **CAN 1 of 2024** and all connected applications, if any, are also, thus, disposed of.

18. All parties shall act on a server copy of this judgment and order uploaded from the official website of High Court at Calcutta.

19. Photostat certified copy of this judgment, if applied for, is to be given to the parties on priority basis on compliance of all legal formalities.

(Ajay Kumar Gupta, J)