

(2019) 11 CAL CK 0010

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 20216 (W) Of 2019

Aditya Ghosh & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 01-11-2019

Acts Referred:

West Bengal Inland Fisheries Act, 1984 — Section 18

Citation : (2019) 11 CAL CK 0010

Hon'ble Judges : Subrata Talukdar, J

Bench : Single Bench

Advocate : S. N. Biswas

Judgement

Subrata Talukdar , J

In this writ petition the petitioners challenge the notice impugned dated 21st October, 2019 issued by the Block Development Officer (BDO) and Chairman, Block Level Water Bodies and Bio Diversity Management and Preservation Committee/the Respondent No.6, inter alia, directing the petitioners to clear all construction over plot no. 1716 marked as pukur measuring an area of 3.70 decimals of Mouza-Karidhya, J. L. No. 106, Suri, District-Birbhum.

Mr. Biswas, Learned Counsel for the petitioners, submits that the impugned notice dated 21st October, 2019 (supra) has been issued in the teeth of a pending appeal by the petitioners under Section 18 of the West Bengal Inland Fisheries Act, 1984 (for short, the 1984 Act) against the Order No.1 dated 3rd November, 2017 of the District Magistrate, Birbhum/the Respondent No.2.

Learned Counsel for the petitioners submits that the appeal under Section 18 of the 1984 Act accompanied by a stay petition and a petition for condonation of delay have been filed pursuant to an order dated 9th September, 2019 in CAN 6427 of 2019 arising out of WP 5774(W) of 2017 passed by a Hon'ble Division Bench of the Court permitting the petitioners to pursue their remedy as law provides.

Drawing the attention of this Court to Section 18 of the 1984 Act, Mr. Biswas submits that the appeal requires to be decided within a period of 90 days from the date of admission of the appeal.

Accordingly, since the foundational basis of the order impugned dated 21st October, 2019 still remains the subject-matter of the appeal, the petitioners pray initially for an urgent order of restraint upon the concerned Respondent No.6, from executing his diktat dated 21st October, 2019.

In spite of filing of affidavit-of-service by the petitioners, none appears to oppose the writ petition.

This Court is also informed that the petitioners obtained leave from the Hon'ble Vacation Bench to move this writ petition on an urgent basis with an initial listing before the Regular Bench on the 31st of October, 2019.

Heard.

Considered the materials placed.

This Court is satisfied that the petitioners have made out a prima face case restraining the authority/the Respondent No.6 from executing the order impugned dated 21st October, 2019.

The concerned authority/the Respondent No.6/the BDO is accordingly restrained from executing the order impugned dated 21st October, 2019 for a period of eight weeks from this date.

The above interim order of restraint shall not however prevent the Appellate Authority from proceeding with the adjudication in the pending appeal before as directed by the Hon'ble Division Bench vide its solemn order dated 9th September, 2019.

Liberty is granted to pray for extension and/or variation of the interim order strictly upon notice to the other sides.

Let the matter appear under the heading "Motions (Gr-I)" in the Combined Monthly List of December, 2019.

The petitioners shall communicate this order to the Respondents and file Affidavit-of-Service on the next date.