

---

**(2008) 06 CAL CK 0066**

**In the Calcutta High Court**

**Case No :** M.A.T. No. 194 of 2008 and C.A.N. No. 4004 of 2008

Himangshu Das and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

---

**Date of Decision :** 30-06-2008

**Acts Referred:**

**Citation :** (2008) 3 CHN 737

**Hon'ble Judges :** Tapan Mukherjee, J;Pranab Kumar Chattopadhyay, J

**Bench :** Division Bench

**Advocate :** Asok Chakraborty and Pinaki Ranjan Chakraborty, for the Appellant;Sambuddha Chakraborty and Kanti Kumar Chakraborty and Milan Chandra Bhattacharyya and Shyamal Kumar Bhattacharyya for Respondent No. 14, for the Respondent

**Final Decision :** Allowed

---

## Judgement

1. This application has been filed in connection with the appeal preferred from the order dated February 8, 2008 passed by the learned Single Judge whereby and whereunder the said learned Single Judge finally disposed of the writ petition filed by the writ petitioner/respondent.

2. By the aforesaid order under appeal, learned Single Judge finally disposed of the writ petition by directing the District Magistrate, North 24-Parganas to look into the allegations made on behalf of the writ petitioner and also directed the said District Magistrate to take certain measures including initiation of legal proceedings.

3. Undisputedly, the aforesaid order was passed by the learned Single Judge on the very first day after filing of the writ petition and in absence of the respondents. The learned Single Judge also recorded the submissions of the learned Counsel of the writ petitioner that notice was given to the respondents.

4. Going through the records of the Writ Court, we do not find any document wherefrom it would appear that any notice was served upon the respondents.

Furthermore, Mr. Milan Bhattacharyya, learned Senior Counsel representing the respondent/writ petitioner fairly admits that no notice was received by the appellants regarding initiation of the writ proceedings till February 8, 2008 when the said writ petition was finally disposed of.

5. Therefore, it is undisputed that the writ petition was finally disposed of by the learned Single Judge by the aforesaid order under appeal without granting any opportunity hearing to the respondents.

6. In compliance with the earlier direction passed by this Bench, affidavits have been filed on behalf of the respective parties in connection with this application.

7. Going through the writ petition, we find that specific allegations have been made against the appellants with regard to the illegal excavation of soil for the purpose of running brick field and also for damaging the embankment of the river Bidyadhari.

8. On behalf of the officers of the State Government including the District Magistrate, North 24-Parganas, and affidavit has been filed before this Court wherein following averments have been made:

8) That with regard to the statement made in paragraph 7 of the said application I humbly submit that on enquiry it has been found that the suit plot was leased out to the appellants by the writ petitioner/respondent and his brothers and they have receiving lease money for the same for past nine years. There was no evidence of extraction of top soil of the suit plot for making bricks. The plot is partly used for drying and making bricks and partly as private road. The brick field uses riverine alluvial silt of Vidyadhari river for making bricks and not the top soil of agricultural land as alleged. No evidence was also found of damage to the river or embankment by the business of the appellants.

11) That with regard to the statement made in paragraph 2 the supplementary affidavit I humbly state that during field enquiry undertaken by the BL & LRO, Minakhan along with R.O. Minakhan and R.I. Samanpukur no evidence was found of illegal extraction of said from the suit land. All the brick kilns of Minakhan P.S. use the alluvial soil of river Vidyadhari and do not extract and use the top soil of agricultural land. No evidence was also found regarding extraction of earth within 20 meter of the river embankment as also within 200 meter of any public metalled road (which in this case is the Basanti Express Way) during the enquiry. The brick field is operating having cleared all Govt, dues (Royalty and Cess) and had also duly applied in "G" form for obtaining the "consent to operate" certificate from the department which was forwarded to the SDL & LRO, Basirhat.

9. In the aforesaid affidavit, it has also been specifically mentioned at paragraph "5" that consent to operate the brick field has been/is being issued.

10. On examination of the aforesaid affidavit filed on behalf of the State respondents, we are of the opinion that the concerned officers of the State Government are very much aware in respect of the running of the brick fields by

the appellants and enquiries were also conducted on earlier occasions by the competent State Government officers in order to ascertain the truth of the allegations levelled against the respondents with regard to the running of the said brick fields.

11. Having heard the learned Counsel appearing for the respective parties and going through the affidavits filed on behalf of the respective parties, we are of the view that the writ petitioner herein is seeking to settle his private dispute by invoking the writ jurisdiction of this Hon"ble Court, which is not permissible. In view of the various enquiries already conducted by the competent Government officers, we do not find any necessity to issue further direction to the District Magistrate, North 24-Parganas to conduct any further enquiry at the instance of the writ petitioner herein.

12. The learned Single Judge, in our opinion, should not have disposed of the writ petition finally by giving specific direction to the District Magistrate to hold an enquiry and initiate proceedings without granting an opportunity of hearing to the respondents. Undisputedly, no document was filed before the said learned Single Judge by the learned Counsel of the writ petitioner in support of his submission that notice was served upon the respondents of the said writ petition. The learned Single Judge also in the aforesaid order under appeal did not refer to any incident whereby and whereunder the legal right or Constitutional right of the said writ petitioner was infringed by or at the instance of the State respondents. As observed earlier, the private dispute cannot be adjudicated by this Court in its Constitutional writ jurisdiction.

13. For the aforementioned reasons, the order under appeal cannot be sustained in the eye of law and the same is, therefore, set aside. However, we make it clear that although we have set aside the order under appeal, the same will not prevent the competent authority from conducting any enquiry or initiating any proceeding in accordance with law in future, if necessary, in connection with the running of the brickfield by the appellants herein.

14. This application thus stands allowed. In view of the aforesaid order, no purpose will be served in keeping the appeal pending. Therefore, by consent of the parties the appeal is also treated as on day"s list and disposed of accordingly.

15. There will be no order as to costs.

16. Urgent xerox plain copy of this order countersigned by Assistant Registrar (Court) ve given to the appearing parties, on usual undertaking.