

(2018) 10 CAL CK 0099

In the Calcutta High Court

Case No : Writ Petition No.20285(W) Of 2018

**Narayan Saha & Others @APPELLANT@Hash Block Land and Land
Reforms Officer, Sodpur, Barrackpore, Block-II & Others**

Date of Decision : 12-10-2018

Acts Referred:

Right To Information Act, 2005 — Section 6

Citation : (2018) 10 CAL CK 0099

Hon'ble Judges : Debasish Kar Gupta, J;Shampa Sarkar, J

Bench : Division Bench

**Advocate : Joy Saha, Soham Kumar Roy, Santanu Das, Satadeep Bhattacharya,
Surajit Biswas, Chayan Gupta, Ankita Roy**

Final Decision : Disposed Off

Judgement

On the prayer made on behalf of the petitioners, leave is granted to add the Executive Officer, South Dum Dum Municipality as a party respondent

(respondent No.5A). This writ application, which is in the nature of public interest litigation, is filed by ten residents of the area within the jurisdiction

of South Dum Dum Municipality. According to them, construction of a multi-storied building is in progress on the plots of land lying and situated in and

around R.S. Dag Nos. 7050, 7060, 7061, 7064, L.R. Dag Nos. 7068, 7078, 7076 and 7082, J.L. No. 20, R.S. No. 154, Sheet No. 12, Police Station

Dum Dum, District North 24-Parganas and a portion of such construction has already been made encroaching upon water body/bodies. It is also the

contention of the petitioners that substantial part of the construction has already been completed. According to the petitioners though complaints have

been lodged to the competent authorities and application has been filed before the competent authority under the Right to Information Act, 2005, they

are sitting tight over the matter for the reasons best known to them.

It is submitted on behalf of the petitioners that the conduct of the Municipalities can be assessed by taking notice of the fact that in spite of service of notice upon them, nobody enters appearance before this Court in this writ application when the same is called on. It is submitted on behalf of the respondent No.7 that he is the owner of the plots of land in question. According to him, his name appears in the records of rights of the plots of land concerned. According to him, the construction over the plots of land in question have been made encroaching upon his property.

On the other hand, it is submitted by the learned Advocate appearing on behalf of the respondent Nos. 8 and 11 that the said respondents are the owners of the land in question. According to him, a Title Suit bearing T.S. Case No. 179 of 2009 has already been decreed on contest by the 2nd Court of learned Civil Judge (Sr. Division), North 24-Parganas on April 8, 2016 declaring that the respondent No.8 is the absolute owner of the property in question. According to him, the construction on the plots of land in question has been made strictly in accordance with the building sanctioned plan duly sanctioned by the South Dum Dum Municipality.

Having heard the learned counsel appearing for the respective parties as also after considering the materials on record, we find from the addresses of the petitioners mentioned in the cause title that they are the residents of the area concerned where the construction has been made on the plots of land in question. No objection is raised by any of the respondents in this regard. Prima facie, we find that they are acquainted with the matter of construction on the plots of land in question and have undertaken research work in this regard. So, we entertain this writ application as a public interest litigation.

We further find that admittedly true copies of the records of rights in respect of the plots of land in question (at pages 47 to 50) the area lying and situated on the plots of land in question have been described as water bodies. It is also evident from the materials on record (at page 56) that an application under Section 6 of the Right To Information Act, 2005 was submitted before the competent authority of the South Dum Dum Municipality, but according to them, the competent authority has been sitting tight over the matter. A true copy of a letter of complaint dated October 4, 2018 addressed to the added respondent No. 5A raising complaint against the alleged

unauthorised construction has also been submitted. Let a true copy of the letter of complaint dated October 4, 2018 be kept on record and granting liberty to the petitioners to affirm a supplementary affidavit to this writ application annexing a true copy of the same and to file the same before this Court in course of the day. Their absence before this Court in spite of service of copies of this writ application upon the respondent Nos. 4 and 5 being the concerned Municipality and its Chairman itself prima facie shows their reluctance to deal with the matter in accordance with law. This conduct is disapproved by this Court.

Mr. N. C. Bihani, learned Advocate, who used to appear on behalf of the South Dum Dum Municipality, is requested to enter appearance in this matter on behalf of the respondent Nos. 4, 5 and 5A and to communicate this order to all the members of the Board of Councillors including the respondent No.5. Let a true copy of this writ application be served upon him in course of the day. We do not find anybody is representing the State-respondents, i.e. the respondent Nos. 1, 2, 3 and 6 respectively. We also disapprove this conduct. Mr. Amitava Mitra, learned State Advocate, who used to appear in a number of matters on behalf of the State-respondents, is requested to enter appearance on behalf of the State-respondents and the learned Legal Remembrancer is requested to regularise his engagement. Let a true copy of this writ application be served upon him in course of the day.

Now coming back to the facts and circumstances of this case, we find that a letter of complaint dated October 4, 2018 has already been lodged in the office of the respondent No.5A, the same remains undisposed. In view of the above, it will be just and proper to give the competent authority of the South Dum Dum Municipality a chance to discharge his function in accordance with law to justify the holding of his office and getting his remuneration from the public exchequer.

Another aspect of the matter cannot be ignored by this Court. An application under Right To Information Act, 2005 has also been submitted before the respondent No.1, i.e. the Block Land and Land Reforms Officer, Sodpur, Barrackpore, Block-II, North 24-Parganas on August 27, 2018. He has been sitting tight over the matter. We are of the considered view, such conduct of the above respondent does not justify holding of his office and

getting his remuneration from the public exchequer for the reasons best known to him.

Be that as it may, we direct the petitioners to communicate this order together with true copy of this writ application along with the supplementary

affidavit, which may be filed pursuant to our aforesaid directions given in this order, upon the respondent Nos. 1 and 5. The respondent No. 1 is

directed to treat this writ application as the representation of the petitioners and to conduct a survey on the plots of land in question in presence of the

respective representatives of the petitioners, respondent Nos. 8 and 11 upon service of prior notice and to submit his observations and

recommendations with regard to plots of land in question to the respondent No.5 within November 30, 2018.

The respondent No.5, in his turn, is directed to forward the copy of this writ application together with supplementary affidavit thereto as also the

recommendation of the respondent No.1 to the competent authority of the respondent No.4 within a week thereafter. The competent authority of the

respondent No.4 is directed to pass a reasoned order in the matter in accordance with law within December 20, 2018 after giving opportunity of

hearing to the respective representatives of the petitioners, respondent Nos. 8 and 11 and other persons concerned, if any, and to communicate such

order to all concerned within December 31, 2018.

Needless to point out that if the respondent No.1 or the competent authority of the respondent No.4 feel it necessary to take any step in accordance

with law on the basis of their decisions, they will be free to take such steps in the matter in accordance with law without further reference to this

Court. Let a true copy of this order be served by the petitioners upon the Secretary to the Government of West Bengal, Department of Municipal

Affairs for ensuring compliance of this order and for taking necessary steps in this matter as he thinks fit and necessary with regard to the conduct of

the State-respondents and the respondent Nos. 4, 5 and 5A.

Let a true copy of this order also be served by the petitioners upon the Secretary to the Government of West Bengal, Department of Home and Hill

Affairs for taking a note of the conduct of the respondent No. 6 and to take further steps in the matter, if necessary. It is made clear that, in view of

the discussions and observations made hereinabove, we have not gone into the

merits of the allegations made by the petitioners in this writ application and the observations made hereinabove with regard to the merits of this case are to be considered as our prima facie views.

Since no affidavit-in-opposition is filed by any of the respondents, the allegations made against them are to be treated as denied by them. This writ application stands disposed of accordingly. There will be, however, no order as to costs. Photostat certified copy of this order be given to the parties on priority basis.