

(2016) 07 CAL CK 0003
In the Calcutta High Court
Case No : W.P. No. 7806 (W) of 2016

Samsul Haque Sardar

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 26-07-2016

Acts Referred:

Citation : (2017) 1 CalJ 179 : (2017) 1 WBLR 638

Hon'ble Judges : Joymalya Bagchi, J.

Bench : Single Bench

Advocate : Parimal Kumar Dwari, Prasanta Behari Mahata, Advocates, for the Appellant; Ranjan Kali, Debrup Bhattacharya, Rima Halder, Advocates, Sushovan Sengupta, Subir Pal, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Joymalya Bagchi, J.—Serious issue relating to environmental pollution as well as the right of cultivation of owners of cultivable land is the subject matter of this writ petition.

2. The petitioner is aggrieved by unlawful breaches caused in the embankments in the rivers in the Sundarban area resulting in indiscriminate inflow of saline water into cultivable area to aid various fisheries who are carrying on pisciculture in the said area. Due to such illegal cutting of embankments the salinity of the land is enhanced as well as the sweet water supply is adversely affected rendering cultivation impossible on such land. On such score, a report was called for from the concerned District Magistrate.

3. Learned advocate for the State submits such report in Court today. It appears from the said report that the District Magistrate has noted the seriousness of the problem and has issued instructions to the police to take steps against the accused persons. First information report has been registered against the accused persons for causing illegal breaches in the embankment. It has also been recorded in the report that necessary deployment of police personnel has

been made to ensure that there is no future illegal cutting of embankment.

Report is kept with the record.

4. Mr. Kali, learned advocate for the private respondents, denies and disputes such allegations. He submits that his clients have been enlarged on bail and insists that they are innocent and have not committed any illegal breach on the embankment resulting in inflow of salt water into the land of the petitioners or otherwise. He further submits that report was prepared by the District Magistrate without hearing of his clients.

5. I have considered the submissions of the parties as well as the report filed by the District Magistrate.

6. I am of the opinion that while the private respondents and other owners of fisheries are entitled to carry on pisciculture in accordance with law in terms of the licence granted to them by the concerned authority, it is not permissible to them to commit illegal breaches in the embankments in the estuarine area of Sundarbans and thereby creating a salt imbalance in the ground water as well as the surface water of the area creating havoc to cultivation activity on cultivable land in the said area. Such action not only constitutes cognizable offences in the eye of law but amounts to breach of fundamental rights of life and livelihood the farmers in the locality like the petitioner whose only livelihood is through the means of cultivation. It is also causing an ecological imbalance which requires to be addressed with utmost promptitude and seriousness.

7. I am informed that the private respondents are carrying on business in pisciculture under a licence issued by the concerned Assistant Director of Fisheries under the West Bengal Inland Fisheries Act. In view of the allegations made by the petitioner that the private respondents have caused illegal breaches in the embankment resulting in inflow of saline water in the area making cultivation impossible and the report of the District Magistrate.

8. I consider it incumbent upon the concerned Assistant Director of Fisheries, District- South 24 Parganas, to institute appropriate proceeding against the private respondents into the aforesaid allegations and after due enquiry and giving an opportunity of hearing to the petitioner and the said private respondents if the said authority is of the view that the private respondents have committed breach in the embankments resulting in inflow of saline water, it would be open to him to cancel the licence issued to the private respondents for carrying on pisciculture and direct them to repair such embankments at their own cost. In view of the gravity of the problem and the widespread nature of such illegal activity, it is also made clear that in the event there are allegations of similar nature against the other fisheries in the area the concerned Assistant Director of Fisheries may take necessary measures and after due enquiry and giving an opportunity of hearing to such erring fisheries may pass similar orders of cancellation of licence of erring pisciculturists as well as directing them to repair the damaged to the embankments so caused by them at their cost. So far

as instant case is concerned, the Assistant Director of Fisheries is directed to institute proceeding against the private respondents within two weeks from the communication of this order and to pass necessary orders thereon within four weeks from the date of initiation of such proceeding.

9. With the aforesaid directions, the writ petition is disposed of.

10. The petitioners as well as the learned lawyer appearing for the State respondents shall communicate the order to the concerned Assistant Director of Fisheries for necessary action.

11. Urgent photostat certified copy, if applied for, be given to the parties subject to all requisite formalities.