

(2019) 03 CAL CK 0015

In the Calcutta High Court

Case No : Writ Petitions (Wp) No. 17150 (W) Of 2018

State Fisheries Development Corporation Limited And Anr.

APPELLANT

Vs

District Magistrate, Purba Medinipur & Ors

RESPONDENT

Date of Decision : 01-03-2019

Acts Referred:

West Bengal Inland Fisheries Act, 1984 — Section 8

Citation : (2019) 03 CAL CK 0015

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Shanti Das, Amar Mitra, Partha Sarkar, Sakya Sen, Tauseef Khan

Final Decision : Dismissed

Judgement

Re: CAN No.2012 of 2019

This is an application for extension of interim order.

It would be appropriate to take up the writ petition for final consideration rather than extending the interim order.

CAN 2012 of 2019 is disposed of by taking up the writ petition for final hearing by treating the same as on the day's list.

No order as to costs.

Learned Advocate appearing for the petitioner submits that, the first petitioner is a Government of West Bengal undertaking. The first petitioner is engaged in the business of pisci-culture. The first petitioner obtained land from the District administration. Subsequent to the first petitioner being put into possession of such land, the petitioner undertook pisci-culture thereat and about 150 persons are working in the project. The State Government is now wrongfully seeking to resume possession of such land. The State Government is not entitled to do so in view of Section 8 of the West Bengal Inland Fisheries Act, 1984. She draws attention of the Court to the fact that, in the earlier writ petition, a direction was

issued to the District Magistrate to hear the petitioners afresh on such issue of eviction. The petitioner preferred an appeal from such direction of the writ Court. The appeal is pending. The District Magistrate afforded an opportunity of hearing to the petitioner. On August 21, 2018, the learned Advocate appearing for the petitioners appeared before the District Magistrate and prayed for an adjournment. Such prayer was rejected and the impugned order was passed. She submits that, the impugned order is vitiated by the breach of principles of natural justice. The petitioner was not afforded an opportunity of hearing. The District Magistrate ought to have taken into consideration the fact that, an appeal was pending against the order passed in the first writ petition. Moreover, the District Magistrate ought to have looked into the provisions of the Act of 1984 and the fact that the first petitioner is in possession of the land in question prior to passing the impugned order. Therefore, there is infirmity in the impugned order requiring the interference by the writ Court.

Learned Advocate appearing for the respondents submits that, the land belongs to the State. The State decided to undertake an eco-tourism project on such land. The first petitioner let out such land to the third parties and is having an income in excess of Rs.34 lakhs therefrom. The State requires the land for public purpose. The first petitioner was asked to vacate the land. The petitioner not having done so, the District Magistrate initiated proceedings for the eviction of the first petitioner. The initial order of eviction, was assailed by the writ petitioner in WP No.5671(W) of 2016 (The State Fisheries Development Corporation Limited and Anr. Versus State of West Bengal & Ors.). Such writ petition was ultimately disposed of by a judgment and order dated May 8, 2018 by requiring the District Magistrate to hear the petitioners afresh and to pass a final order. The judgment and order dated May 8, 2018 allows the District Magistrate to take possession with adequate police help and evict the petitioner from the tank in question after expiry of 10 days from the date of such decision.

He submits that, there is no infirmity in the impugned order. The petitioners were afforded a reasonable opportunity of hearing. Although the petitioners preferred an appeal from the judgment and order dated May 8, 2018, the petitioners did not obtain any stay. Therefore, there was no impediment in the District Magistrate deciding the issue. The petitioners wanted time on August 21, 2018 so as to delay the project if possible. Refusal of a prayer for adjournment ought not to be interfered with. Therefore, according to him, the writ petition should be dismissed.

Having regard to the rival submissions of the parties and after considering the materials placed on record, I find that, the first petitioner is in possession of a plot of land which, the State Government requires for the purpose of undertaking an eco-tourism project. The District Magistrate initiated proceedings for eviction of the petitioners. Such proceedings resulted in an order which was assailed by the petitioners in WP No.5671(W) of 2016. Such writ petition was ultimately disposed of by the judgment and order dated May 8, 2018 requiring the District

Magistrate to give fresh hearing to the petitioners and to take a decision thereon. It also provided that, in the event, the District Magistrate decides that, there is nothing which would make him change his mind so far taking of possession of the tank in question as indicated in the letter dated May 26, 2015, he shall take possession and evict the petitioners from the tank in question after expiry of 10 days from the date of such decision.

Subsequent thereto, the District Magistrate heard the parties afresh on August 21, 2018. The petitioner was represented before the District Magistrate. A prayer for adjournment was made on behalf of the petitioner and such prayer was rejected. The District Magistrate finds that, there was no document of title existing in favour of the petitioners. Therefore, the District Magistrate proceeds to direct the eviction of the petitioner in consonance with the judgment and order dated May 8, 2018.

An adjudicating authority is entitled to reject a prayer for adjournment. In the present case, the adjudicating authority did not allow the petitioners' prayer for adjournment. There is no infirmity in the rejection of such prayer. Merely, because the adjudicating authority rejected a prayer for adjournment ipso facto does not mean that, the proceeding stands vitiated by breach of principles of natural justice. The petitioner was afforded a reasonable opportunity of hearing. The petitioner did not avail of the same. That does not tantamount to the adjudicating authority acting in breach of the principles of natural justice warranting intervention by the writ Court.

The parties are bound by the judgment and order dated May 8, 2018 passed in WP No.5671(W) of 2016. Although an appeal is pending, since there is no stay, no infirmity can be ascribed in the action taken by the District Magistrate in deciding the issue finally.

In such circumstances, I find no reason to interfere with the decision impugned of the District Magistrate.

WP No.17150(W) of 2018 is dismissed.

No order as to costs.

On the prayer of the learned Advocate for the petitioners, stay of this order is granted for a period of fifteen days from date.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.