
(2018) 12 CAL CK 0104
In the Calcutta High Court
Case No : Writ Petition No. 22948(W) Of 2018

Zakir Hossain Khan	Vs	APPELLANT
State Of West Bengal & Ors		RESPONDENT

Date of Decision : 14-12-2018

Acts Referred:

Citation : (2018) 12 CAL CK 0104

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

Bench : Division Bench

Advocate : Siddhartha Sarkar, Swapan Kumar Dutta, Debjani Mitra

Final Decision : Disposed Off

Judgement

Having heard the learned Counsel appearing for the respective parties, we find that it has been rightly pointed out by Mr. Swapan Kumar Dutta, learned Additional Government Pleader, High Court, Calcutta that apart from the State of West Bengal, Service through the Secretary to the Government of West Bengal, Department of Irrigation, the Land & Land Reforms Department and other respondents are needed to be added in this writ application for full and proper adjudication in this case.

The petitioner does not raise any objection with regard to the above submissions.

In view of the above, at the very outset, leave is granted to the petitioner to add the following parties as respondents to this proceeding:-

- i) The Secretary to the Government of West Bengal, Land & Land Reforms Department.
- ii) The Secretary to the Government of West Bengal, Department of Urban Development and Municipal Affairs.
- iii) The District Magistrate, District Howrah.
- iv) The Howrah Municipal Corporation, service through the Administrator.

Since Mr. Swapan Kumar Dutta, learned Additional Government Pleader entered appearance being assisted by Ms. Debjani Mitra, learned Advocate, on behalf of the first three parties and Mr. Nayan Chand Bihani, learned Advocate, entered appearance with a junior of his choice on behalf of the remaining parties, the service of this writ application upon the aforesaid respondents stands dispensed with recording that a true copy of this writ application is served upon Mr. Bihani, learned Advocate in Court today.

This writ application is filed by the petitioner alleging inaction on the part of the respondent authorities in taking appropriate steps for desilting Howrah Zilla Parishad Canal and its branches, which run through the District of Howrah, ultimately reaching to river Ganges.

In compliance of the order dated November 30, 2018, Mr. Goutam Kumar Chattejee, Secretary to the Government of West Bengal, Department of Irrigation and Waterways, and the Sub-Divisional Officer, Howrah Drainage Sub-Division, are present in Court today.

A report dated December 13, 2018 prepared by the aforesaid Secretary to the Government of West Bengal, Irrigation & Waterways Department, is submitted before us today by Mr. Dutta. In the aforesaid report, the conditions of the canal in question has not been disputed. According to the aforesaid report, the entire land has been vested to the State of West Bengal with some diversion passing through the private lands. According to the above report, an inspection to the site in question was undertaken by the Field Level Officer of Howrah Drainage Sub-Division in the month of October, 2017 and the observations made by the above Field Level Officer are as follows :

"(a)The khal is having as many as 3 numbers of cross bundhs for crossing over, which totally blocked the khal and converted the khal into segregated compartments.

(Annexure-III)

(b)That waterway of the khal was encroached along with the sides, in the form of shops, residential buildings, reclaimed land etc. About 54 nos. of Pucca houses and 37 nos. of Kutcha houses are found as encroachment 5 nos. of culverts are found at different points over this khal.

(c)That there is a primary school (Moukhali 2 No. Prathamik Vidyalaya) right across the entire and totally blocking the waterway near its outfall to Howrah drainage Channel(Annexure-II & Annexure-III)

(d)That a narrow earthen diversion channel starting from 80m south of the above said Primary School, if now receiving the upstream flow and carry be discharged to the Howrah Drainage Channel, length of the Channel is 50m)
(Annexure-III)

(e)That land records pertaining to the main khal as well as the diversion channel

could not be verified without demarcation of the and by the concerned Block Land & Land Reforms Officer(B.L. & L.R.O.)

(f)That it was also practically impossible to measure the existing cross section of the khal(required for ascertaining the present discharge carrying capacity) due to heavy encroachment as stated above.

(g)That photographs were taken an extensive reconnaissance survey was conducted which revealed that the water-logging to some extent take place in the area during high intensity rain fall.(Annexure-IV).

That the local land and land reforms officials(that is B.L.& L.R.Os. of Bally-Jagacha Block on one side and Sankarail Block on the other side) along with the District Land & Land Reforms Officer and ADM(LR) were requested to conduct a joint field verification survey for actual demarcation of the khal and channel. (Annexure -I).

That upon receipt of records from the concerned B.L.& L.R.O. it revealed that :

(a)The entire khal is on vested land (khatian no.1, Dag No.5093, J.L. NO.10, Mouza Unsani) recorded in favour of Collector. (Annexure-II)

(b)The primary school stated in 2© above, Khatian no. 632/2, Dag No.1, J.L. No.9, Mouza Sultanpur is recorded in favour of Howrah Zilla School Board. So, it is not an encroachment. (Annexure - II)"

Considering the aforesaid situation, the following remedial measures are suggested in the report.

"(a)Removal of encroachment on the main khal by the District Administration, since the land is under their possession.

(b)Procurement of further land for widening the diversion channel, by way of direct purchase in accordance with prevailing policy of the State Government, subject to consent of the part of the land owners to part with their land. Total quantum of land to be procured, stands at 0.15 acre as per primary assessment."

It is submitted by the learned Advocate appearing on behalf of the petitioner that immediate remedial steps should be taken to remove the sufferings of the local inhabitants.

We have heard the learned Counsel appearing for the respective parties at length and we have considered the facts and circumstances of this case.

We appreciate the submissions made by Mr. Swapan Kumar Dutta, learned Additional Government Pleader, that this is not an adversary litigation, rather it is a litigation for the greater interest of the public. It is also submitted by him, on instruction, from the officer present in Court today that the authorities will not hesitate to take remedial steps immediately for removal of the hardship of the local inhabitants concerned.

In view of the above, we direct the authorities of the Land & Land Reforms Department and the Irrigation and Waterways Department including the District authorities, namely, the District Magistrate and others, and the authorities of the Howrah Municipal Corporation to take immediate remedial steps in the matter of desilting and beautification of "Howrah Zilla Parishad Canal" as also its branches, which runs through the District of Howrah, ultimately reaching to the river Ganges in accordance with law and to complete the entire mission without any delay, preferably before the next rainy session.

With the aforesaid directions, this writ application stands disposed of.

There will be however no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.