Amar Nath Bain and Another Vs District Magistrate and Others

M.A.T. No. 1901 of 2005 and CAN No. 6023 of 2005

Court: Calcutta High Court

Date of Decision: Nov. 17, 2006

Citation: (2007) 1 CHN 346 : (2007) 1 ILR (Cal) 253

Hon'ble Judges: Prabuddha Sankar Banerjee, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: S.K. Bhattacharya, for the Appellant;A.N. Banerjee and K.N. Nabi, for the Respondent

Judgement

Bhaskar Bhattacharya, J.
This mandamus appeal is at the instance of the writ petitioners and is directed against order dated 19th April,

2005 passed by a learned Single Judge of this Court by which His Lordship disposed of the writ application filed by the appellants by directing the

Secretary, Irrigation and Waterways Department, Government of West Bengal to take necessary step for repairing the sluice-gate in question at an

early date and at any rate, before 8th June, 2005. By the said order His Lordship further directed the said Secretary of the Government of West

Bengal to provide necessary fund in this regard so that the maintenance and repairing works of the sluice-gate in question were not delayed in any

circumstances.

2. Being dissatisfied, the writ petitioners have come up with the present mandamus appeal.

3. The case made out by the appellants in their writ application may be summed up thus:

(a) The writ petitioner No. 1 is a bona fide bargadar in respect of the land mentioned in paragraph 2 of the application which he took from the

concerned Gram Panchayat and the other petitioners physically held possession and cultivated their lands mentioned in the said paragraph as

owner and raiyat.

(b) The river ""Vidyadhari"" situated on the northern side of the petitioners'' land and the public water-channel locally known as ""Kumarjole Khal"" or

Kali Khal"" and its public embankment are situated on the southern side of the petitioners'' paddy land and the said water-channel runs by the side

of the petitioners'' paddy land.

(c) The high-efflux river Vidyadhari flows to the north of Ghusighata Concrete Bridge maintained by Public Works Road Department, Government

of West Bengal and situated on the Calcutta-Basanti Highway and close to Ghusighata Bazar under Minakhan Police Station, District North 24-

Parganas.

(d) A four-vent sluice-gate has been set up by the respondent Nos. 2 to 5 and 14 being the Irrigation Department of the Government of West

Bengal on the said effluent river, about 130 yards from the said concrete bridge of Ghusighata for the purpose of regulating the outlet of the saline

water of the river Vidyadhari. The Irrigation Department also maintained a wide channel known as ""Kumarjole Khal"" and/or ""Kali Khal"" with high

embankment which starts from the southern-side of the said four-vent sluice-gate near the Ghusighata Concrete Bridge.

(e) The said water-channel with high embankment flows through the Tentultala, Laugachiabad, Jhikra Mouzas and other neighbouring villages in

order to stream-line the effux of the reverine saline water drained through the said four-vent sluice-gate so that the saline water might not cause

harm to or inundate the agricultural land of the Mouzas Tentultala, Laugachiabad, Jhikra, etc. and neighbouring villages.

(f) Some unscrupulous persons, in the middle of the month of November, 2004, had motivatedly unlocked and dismantled the aforesaid four-vent

sluice-gate which is situated 120 yards from the Ghusighata Concrete Bridge with the sinister motive to unlawfully take the reverine saline water of

the said Vidyadhari river situated on the northern-side of the Ghusighata Concrete Bridge through the said public canal being locally known as

Kumarjole Khal"" and/or ""Kali Khal"" for the purpose of production of shrimp, lobster and other fishes with the help of the saline water of the said

river. They further cut through and excavated part by part the public embankment on both the sides of the said canal here and there at Tentultala,

Jhikra, and Laugachiabad Mouzas with ulterior motive to bring the said saline water to far off land of Tentultala, etc. for the purpose of pisciculture.

The Pradhan of Bamunpukur Gram Panchayat being the respondent No. 7 was also maintaining a fishery in Tentultala Mouza and for that purpose,

he had taken lease of land from the concerned landowners for the purpose of pisciculture therein and the same was situated near the petitioners''

paddy land.

(g) In consequence of the aforesaid fact of unlocking the said four-vent sluice-gate near the Ghusighata Concrete Bridge and damaging the public

embankment on the said Kumarjole Public Channel, a vast expanse of agricultural land including the lands of the petitioners comprised in Mouzas

Tentultala, Jhikra, Laugachiabad and other lands of the neighbouring villages had been flooded with 3-4 feet deep saline water of the said

Vidyadhari river and as such, the cultivation of agricultural crops including paddy on the petitioners'' plots of land had been totally stopped.

(h) In view of the aforesaid act of unlocking of the said four-vent sluice-gate and partial destruction the public embankment on the said Kumarjole

Channel and setting up of cement and/or concrete or wooden boxes under the said damaged portion of the embankment for passing the saline

water through those boxes, the agricultural land had been converted into a fishery to a great detriment to the production of agricultural crops and in

view of the aforesaid fact and situation, it has become impossible for the petitioners to yield crops on their said lands situated in Mouza Tentultala.

(i) The said respondent-authorities were not taking any step for preventing the miscreants from causing the damages of the embankment on the

Kumarjole Khal or from setting up all those boxes for the purpose of bringing saline water into the agricultural land. The appellant, therefore,

requested the said respondent-authority to take necessary steps for effecting necessary repair to the dismantled four-vent sluice-gate installed 120

yards south of Ghusighata Concrete Bridge and for taking appropriate steps for maintaining the said sluice-gate to ensure regularity in opening and

closing of the said sluice-gate and to prevent outlet of saline water of river Vidyadhari through the said sluice-gate at random and also to take steps

for repairing the damaged public embankment on the Kumarjole Channel and removing the concrete boxes or pipes and wooden boxes set up at

the destructed portion of the said public embankment.

(j) The State-respondents failed to take any step and as such, a writ application was filed thereby praying for direction upon the respondents to

make necessary repair of the dismantled four-vent public sluice-gate installed 120 yards south of Ghusighata Concrete Bridge on the Calcutta-

Basanti Highway and to make effective and thorough repair of four-vent public sluice-gate constructed by the Government and for making

arrangement for proper maintenance to ensure regularity in opening and closing of the same and to prevent outlet of saline water of river

Vidyadhari through the said sluice-gate particularly during the spring tide and also to take step for repairing the damaged public embankment on

the Kumarjole Channel and removing the concrete boxes or pipes and wooden boxes illegally set up under the excavated public embankment of

Mouzas Tentultala, Jhikra, etc. on both sides of the said embankment.

4. The learned Single Judge on consideration of the materials on record directed the Sub-Divisional Officer, Calcutta Drainage Outfall Sub-

Division-III to be personally present before His Lordship and to submit a report to be given by the Executive Engineer on the aforesaid allegation.

5. On the basis of the report submitted pursuant to the aforesaid order, the learned Single Judge directed the Secretary, Irrigation and Waterways

Department, Government of West Bengal to take necessary step for repairing the sluice-gate in question at an early date, positively, by 8th June,

2005 and the said Secretary was further directed to provide necessary fund in regard to the maintenance and repairing work of the sluice-gate in

question.

6. Being dissatisfied, the appellants have come up with the present mandamus appeal.

7. Mr. Bhattacharya, the learned Advocate appearing on behalf of the appellants has submitted before us that the learned Single Judge in addition

to the direction passed in the order impugned ought to have also passed the direction for taking appropriate step for repairing of the broken

embankment and for removal of the boxes and pipe-lines through which saline water are brought into the agricultural land of the appellants and

other persons. Mr. Bhattacharya submitted that mere maintenance of the sluice-gate will serve no purpose if the saline water is brought to the

surrounding agricultural land including the lands of the petitioners through other sources as mentioned above.

8. Mr. Banerjee, the learned Advocate appearing on behalf of the State-respondents, after taking instructions from his clients, seriously disputed

the aforesaid allegations and submitted that no part of the land of the appellants was under the saline water as alleged nor was there any boxes

illegally set up for bringing saline water to the land of the appellants.

9. In view of such conflicting claims, this Court appointed a learned Advocate of this Court as Special Officer for the purpose of ascertaining

whether the allegation of the writ petitioners was correct. The said Special Officer was directed to give report whether the lands of the writ

petitioners were really emerged with saline water by illegal creation of boxes on the damaged public embankment on the Kumarjole Khal.

10. Pursuant to such direction, the learned Special Officer in the presence of all the parties concerned made inspection and has given report which

substantially supports the claim of the writ petitioners. It is specifically stated that the lands of the writ petitioners are lying inside more than four

feet-deep saline water and at the same time, the embankment on the channel is damaged at different places as alleged by the appellant and the

existence of the boxes for bringing saline water on the agricultural lands mentioned by them has also been established from the said report.

11. In spite of giving opportunity to file objection, nobody has given any objection to the said report.

12. In view of the aforesaid fact, we are convinced that the allegation of the appellants that by bringing saline water of river Vidyadhari through the

destructed embankment and by creation of boxes, some persons with ill-motive are engaged in pisciculture over the agriculture lands of the writ

petitioners and other persons of the locality.

13. In view of the aforesaid fact, we are of the opinion that in addition to the direction given by the learned Single Judge regarding the maintenance

of the sluice-gate and regular repair of the same, those respondents should be further directed to see that the embankment on the Kumarjole Khal

is properly maintained and all the broken portions are repaired and those boxes are removed so that the saline water of Vidyadhari river cannot

come over the agricultural lands of the appellants as mentioned in the writ application.

14. It is apparent that the State Government in this case has failed to prevent the illegal activities of some unscrupulous persons of the locality who

are carrying on pisciculture over the agricultural lands of others including the lands of the appellants.

15. We, therefore, allow this appeal by modifying the order passed by the learned Single Judge thereby directing that in addition to the directions

given by the learned Single Judge, the said respondents, namely, Irrigation Department of the Government of West Bengal with the help of all local

Gram Panchayat will make immediate repair of the embankment which are broken at the places and at the same time, should remove all those

boxes and pipe-lines through which saline water from river Vidyadhari are brought over the lands of the writ petitioners as described in the writ

application. The concerned department is also directed to release necessary fund for those repair-work and those repair-work should be done

positively within four months from today and the report of compliance should be placed before this Court by 28th February, 2007.

16. The mandamus appeal is, thus, disposed of with the aforesaid order. In the facts and circumstances, there will be, however, no order as to

costs.

Prabuddha Sankar Banerjee, J.

17. I agree.