

June 15, 2022  
Sl. No.1-6  
Court No.1  
PA(SS)

WPA (P) 258 of 2022

*Niladri Saha*

*vs.*

*The State of West Bengal and others*

*With*

WPA (P) 261 of 2022

*Priyanka Tibrewal*

*vs.*

*State of West Bengal and others*

*With*

WPA (P) 264 of 2022

*Rivu Dutta*

*vs.*

*Union of India and Others*

*With*

WPA (P) 259 of 2022

*Masum Ali Sardar*

*vs.*

*The State of West Bengal and others*

*With*

WPA (P) 260 of 2022

*Paramita Dey*

*vs.*

*The State of West Bengal and others*

*With*

WPA (P) 256 of 2022

*Devdutta Maji @Devdutta Majhi*

*vs.*

*The State of West Bengal and others*

Ms. Susmita Saha Dutta,  
Ms. Pallabi Chatterjee, Advocates

... for the petitioner  
in WPA (P) 258 of 2022

Ms. Priyanka Tibrewal, Advocate

... petitioner-in-person  
in WPA (P) 261 of 2022

Mr. Subir Sanyal,  
Mr. Swatarup Banerjee,  
Mr. Krishnendu Bhattacharya,

Mr. Kallol Mandal,  
 Ms. Aparna Banerjee,  
 Mr. Lokenath Chatterjee,  
 Mr. Sukanta Ghosh,  
 Ms. Sarda Sha,  
 Ms. Sabita Roy,  
 Ms. Mary Datta, Advocates

... for the petitioner  
 in WPA (P) 264 of 2022

Mr. Sardar Amjad Ali, Senior Advocate  
 Ms. Jhuma Sen, Advocate

... for the petitioner  
 in WPA (P) 259 of 2022

Mr. Dipayan Kundu, Advocate

... for the petitioner  
 in WPA (P) 260 of 2022

Mr. Surajit Nath Mitra, Senior Advocate  
 Mr. Aniruddha Chatterjee,  
 Mr. Kallol Mondal,  
 Mr. Nilanjan Bhattacharjee,  
 Mr. Aryak Dutta,  
 Mr. Partha Ghosh,  
 Mr. Ajay Chaubey,  
 Mr. Anup Dasgupta,  
 Mr. Ajit Mishra,  
 Mr. Vikash Singh,  
 Mr. Anindya Sundar Das,  
 Mr. Sunny Nandy, Advocates

... for the petitioner  
 in WPA (P) 256 of 2022

Mr. S. N. Mookherjee, Id. Advocate General  
 Mr. Anirban Ray, Id. Government Pleader  
 Mr. Amitesh Banerjee, Senior Standing Counsel  
 Mr. Raja Saha,  
 Mr. Debasish Ghosh,  
 Mr. Nilotpal Chatterjee,  
 Mr. Debraj Sahu, Advocates

... for the State

Mr. Dhiraj Kumar Tribedi, Assistant Solicitor General  
 Mr. Tarunjyoti Tewari, Advocate

... for the Union of India

Mr. Billwadal Bhattacharyya, Assistant Solicitor General  
 Mr. Bhaskar Prasad Banerjee, Advocate

... for the NIA

Mr. Billwadal Bhattacharyya, Assistant Solicitor General  
 Mr. Bhaskar Prasad Banerjee,  
 Mr. Debasish Tendon,  
 Ms. Shalini Ghosh, Advocates

... for the NIA  
 in WPA (P) 256 of 2022

In pursuance to the previous order, learned Advocate  
 General has filed the report in the form of affidavit today  
 disclosing the details of the FIRs which have been

registered in the Howrah Police Commissionerate, Howrah Rural, Barasat Police District, Murshidabad Police District, Jangipur Police District, Krishnanagar Police District, Kharagpur Government Railway Police (GRP), Sealdah GRP, Bidhannagar Police Commissionerate and Diamond Harbour Police District against the miscreants. The affidavit also discloses the arrests which have been made in these districts in pursuance to the FIR.

Learned Advocate General has submitted that the State authorities are collecting the video footages to identify the miscreants for the purpose of taking action against them. He has also submitted that in last 48 hours no untoward incident has taken place. He has referred to the judgment of the Hon'ble Supreme Court in the matter of **Destruction of Public and Private Properties, In Re vs. State of Andhra Pradesh and Others** reported in **(2009) 5 SCC 212** wherein Hon'ble Supreme Court had issued guidelines for adoption in the absence of legislation to assess damage. In terms of the said guidelines the action is required to assess the damage caused to public and private properties in the name of agitation, bandh, hartal etc. and to award compensation related thereto. The guidelines further provide for summoning of video or other recordings from private and public sources to pin point the damage and establish nexus with the perpetrators of the damage and the

liability will be borne by the actual perpetrator of the crime as well as the organizers of the event giving rise to the liability.

Learned Advocate General has referred to the Section 15A, 15B and 15C of the West Bengal Maintenance of Public Order Act, 1972 as amended by the West Bengal Maintenance of Public Order (Amendment) Act, 2017. These amended provisions provide for punishment for committing mischief in respect of property, compensation in addition to any punishment and power of the State Government to impose collective compensation and read as under:

#### “CHAPTER IVA

#### **Mischief and Compensation**

##### **15A. Whoever,—**

(a) commits, instigates, incites or otherwise abets the commission of mischief within the meaning of section 425 of the Indian Penal Code, 1860 and causes loss or damage to any property; or

(b) causes loss or damage to any property in any area during the period when an assembly of five or more persons in such area is prohibited by or under any law for the time being in force, or when such assembly is deemed as an unlawful assembly under section 141 of the Indian Penal Code, 1860,

shall be punishable with imprisonment for the term as prescribed in the Indian Penal Code, 1860, for the respective offences.

**15B.** Notwithstanding anything contained under section 15A, a person committing offence of mischief shall also be liable to pay the compensation to the extent of damage caused to the property as may be determined by the court.

**15C.** (1) If, after enquiry in the prescribed manner, the State Government is satisfied that the inhabitants of any area are concerned in, or abetting or insisting, the compensation of an offence punishable under Section 15A or harbouring persons concerned in the commission of the said offence or failing to render all assistance in their power to discover or apprehend the offender or offenders or suppressing material evidence of the commission of such offence, the State Government may, by notification in the *Official Gazette*, impose a collective compensation on such inhabitants and apportion such compensation amongst the inhabitants in such manner as may be prescribed:

Provided that the compensation so apportioned shall not be recovered from any of the inhabitants until the petition, if any, filed by him under sub-section (3) is disposed of.

(2) The notification made under sub-section (1), shall be proclaimed in the area by beat of drum or in such other manner as the State Government may think best in the circumstances to bring the imposition of the collective compensation to the notice of the inhabitants of the said area.

(3) (a) Any person aggrieved by the imposition of the collective compensation or by the order of apportionment under sub-section (1), may, within

thirty days of the notification, file a petition before the State Government or such other authority as it may specify in this behalf for being exempted from such compensation or for modification of the order of apportionment. No fee shall be charged for filing such petition.

(b) The State Government or the authority specified by it shall, after giving to the petitioner a reasonable opportunity of being heard, pass such order as it may think fit:

Provided that the amount of compensation exempted or reduced under this subsection shall not be realisable from any other person, and the total compensation imposed on the inhabitants of the area under sub-section (1) shall be deemed to have been reduced by that extent.

(4) Notwithstanding anything contained in sub-section (3), the State Government may exempt any of the inhabitants who have suffered loss or damage to their property in the manner stated in section 15A from the liability to pay the collective compensation imposed under sub-section (1) or any portion thereof.

(5) The State Government may, after such enquiry as it may consider necessary determine the amount of compensation which in its opinion may be paid to the person or persons who suffered loss or damage as aforesaid and pay the same out of the collective compensation and compensation collected under this Act.

(6) The portion of collective compensation payable by any person may be recovered by the State Government by certificate under the Bengal Public Demands Recovery Act, 1913.”

He has submitted that the Government is intending to take action against the miscreants under the above provisions and for that purpose the Government is in the process of collecting the video footages from different sources.

In WPA(P) 258 of 2022 and WPA(P) 256 of 2022, supplementary affidavits have been filed. Submissions have been made to the effect that large gathering are taking place in the name of peaceful gathering wherein provocative slogans are being raised and that in the name of registering FIR even the innocent people are implicated and that petitioners apprehend that on a particular day of the week organized violence may flair. It is also submitted that to control such eventuality Central Forces should be called and the State authorities should not wait for happenings of any such unwanted incident.

By the order dated 13<sup>th</sup> of June, 2022, we had directed as under:

“In the meanwhile we express hope that the State authorities will take all possible steps to ensure that no untoward incident takes place and peace is maintained. In case, the State Police is unable to control the situation at any place then State authorities will take immediate steps to call the central forces. Concerned State authorities will also collect the video footage of the incident so that the miscreants can be identified and appropriate action can be taken against them. Learned Advocate General will also make the stand of State clear on

the issue of grant of compensation to those who have suffered loss of property in the untoward incidents.”

Having regard to the apprehension which have been expressed, we direct the State authorities to assess the ground situation in advance and take steps to call for the Central Forces in terms of earlier directions in case if the need so arises, before the situation goes out of control or before any loss of life or property takes place.

The State authorities will take all possible preventive steps to ensure that no such incident takes place.

The State authorities will also take expeditious steps to collect the video footages and take action in terms of the above mentioned provisions of the Act of 1972.

Let the further report in this regard be filed by the State on or before the next date of hearing.

List on 27<sup>th</sup> of June, 2022.

**[Prakash Shrivastava, C.J.]**

**[Rajarshi Bharadwaj, J.]**