

02.12.2020
SL No.40
Court No.12
(sg/gc)

MAT 429 of 2020
With
CAN 1 of 2020
(Old No. CAN 5055/2020)
With
CAN 2 of 2020
(Old No. CAN 5057 of 2020)

Amal Kumar Majhi & Ors.
Vs.
State of West Bengal & Ors.

(Via Video Conference)

Mr. Kalyan Bandyopadhyay,
Mr. Tapas Kr. Adhikari,
Mr. Abjijit Ghosh,
...for the Appellants.

Mr. Mohinoor Rahaman,
Mr. Sk. Abumusa,
...for the Respondent Nos.3 & 5.

Mr. Jishnu Chowdhury,
Ms. Amrita Panja Moulick
...for the State.

By consent of the parties the appeal and the applications are taken up together and disposed of by this common order.

This litigation is a perfect example of the famous phrase “make hay when the sun shines”.

The appellants enjoyed Muktarpur Ferry Ghat at least from 2004 till date without paying any licence fee. The appellants in various proceedings have admitted that they are managing the business of Ferry service at Muktarpur, P.O.-Belanagar, P.S.-Nowda, District-

Murshidabad and the said Ferry Ghat is on a vested land belonging to the State of West Bengal and it is alleged that it was settled in their favour. Prima facie, it appears that there was settlement of the ferry ghat in their favour which, however, was terminated sometimes in 2004 when a fresh auction was called for resulting in a writ petition being filed challenging such auction. The matter reached to a Coordinate Bench which observed that the auction process may continue but shall abide by the result of the writ petition. For reasons unknown or kept under the carpet, the petitioners continued to enjoy the Ferry Ghat on a specious plea that although they were willing and eager enough to offer a paltry sum of Rs.5000/- per annum for managing the Ferry Ghat but the respondents were adamant and reluctant to accept the same. In fact, such pretended reluctance or apparent refusal enured to the benefit of the petitioners as they continue to run the Ferry Ghat till date at the cost of the Government exchequer with impunity.

Mr. Bandyopadhyay has referred to Paragraph 13 of the Writ Petition and relevant documents at page 46 to show that adjacent lands have been settled in favour of the writ petitioners so as to enable them to construct office room and facilitate ingress and egress to the said Muktarpur Ferry Ghat and on the opposite side of the river at Karimpur. The petitioners owned land where office and

ingress and egress to the said Ferry Ghat are presently in existence.

In the various proceedings emanating from the auction, we had come across an order passed by Justice Subrata Talukdar on 31st July, 2018 in W.P.11174(W) of 2018 where the facts have been accurately summarized and for the sake of prolixity we do not repeat what has been narrated and the same is treated as part of the order, save and except, to record that the auction was allowed to go and it would be open for all eligible participants. Surprisingly, the appellants did not participate in the tender for the obvious reason that they are challenging the authority of the Panchayat to auction the same as they were enjoying an unfettered monopoly for all these years without paying a farthing. However, in their challenge to the auction, the appellants have urged that although Muktarpur Ferry Ghat has been vested to the State by operation of law but the petitioners took settlement of adjacent land in order to construct office room and ingress and egress to the said Muktarpur Ferry Ghat to run the said ferry service and besides the land of the petitioners there is no way to go to the said Muktarpur Ferry Ghat and also the opposite side of the river at Karimpur, Nadia the petitioners are the owners of the land where office and ingress and egress to the said Ferry Ghat lies. It was on the basis of such connectivity between the two banks of the river the petitioners challenged the said auction notice.

The learned Counsel for the Panchayat submits that although the auction was settled at Rs.1 Crore and above but the same could not be given effect to because of pending proceeding and the appeal. The Ferry Ghat could not be settled in favour of the successful bidder. It appears that the learned Single Judge on the basis of the submission made on behalf of the parties before His Lordship on 16th July, 2019 appointed a Special Officer to do the following :-

“a) The said Special Officer accompanied by the learned Advocate for the respondents including the State and the writ petitioner and/or their representatives shall physically go down to the said river by using the road indicated in green shaded portion at page 75 of the paper book. If it is possible for him to do so without stepping into the land of the petitioner he shall file a report to that effect.

b) He shall take assistance of Amin and the concerned Block Land and Land Reforms Officer who shall also indicate the dag number through which the road has traveled. In the event if it is not possible to access the ghat entirely through the road indicated at Annexure R-2 he shall also report the same. He shall take photographs including videography of the road traveled by him.

c) The Amin and the Block Land and Land Reforms Officer together shall give a report which will be part of the Special Officer's report comparing the mouza map of the site as shown by the petitioner and the road as shown by the respondents.”

The appointment of the Special Officer was not opposed by either of the parties. In fact Special Officer was

appointed by consent. The justification for such direction appears to be the contention of the State respondents and the Panchayat that as per Mouza Map, there are stations on both the bank of the river Jalangi and the Ferry Ghat is running in between the said two stations. One station is situated on the side of Murshidabad District under Mouza - Muktarpur, JL No.22, P.S.-Nowda, which is directly connected by two roads being Plot Nos.77 and 64 and there is no need to use any private land for ingress and egress into the Ferry Ghat and in no way the land of the petitioners on the side of Murshidabad is used and/or required for running the Muktarpur Ferry Ghat. It further appears from one of the affidavits filed by the Panchayat that on the side of the Nadia District, the stations situated on the bank of the river is directly connected by road and as per the R.S. Mouza Map, it was clearly evident that the R.S. Plot No.6 (now L.R. Plot No.18), R.S. Plot No.7 (now L.R. Plot No.19), R.S. Plot No.2 (now L.R. Plot No.3, 4, 40, 1480) and R.S. Plot No.3 (now L.R. Plot No.4,5) is situated on the road side and not on the road and the land of the petitioners is no way connected with the Ferry Ghat. The affidavit of the Government in one of such proceedings have reiterated the fact that the plot information and enquiry report of 27th September, 2018 and the L.R. Map of Muktarpur Mouza was obtained from BL&LRO clearly shows that the land over which ingress is sought for to run

the Ferry Ghat is a vested property of the State of West Bengal and not the private land of the petitioners.

This clearly explains the necessity of the Special Officer to make an inspection and file a report.

The Special Officer, accordingly, filed a report which was taken on record at the time of hearing by the learned Single Judge. The relevant portion of the report of the Special Officer is reproduced below:-

- “1. That the lands in possession of the petitioner situates at the bank of river, which is a part of Plot No.62, J.L. No.22, Mouza- Moktarpur, Police Station Nowda, District – Murshidabad. Said Plot No.62 comprise of an area about 30 decimals which is a vested land and pattas have been granted in favour of some persons. Two patta holders permitted the petitioners to use their 20 decimals patta land adjacent to the road indicated in green shaded portion at page 75.
2. That road indicated in green shaded portion at page 75 is a part of Plot No.77, J.L. No.22, Mouza- Moktarpur, Police Station – Nowda, District – Murshidabad, through which I walked from jetty to existing village concrete road without stepping in to the lands in possession of the petitioners.
3. That a portion of said road appertaining plot No.77 has been encroached by (1) boundary-wall and urinal of a local Mosque, (2) Sweet Shop; and temporary shade built by bamboo to keep cattle as a result some portion of said road became narrow, even then anybody can walk through that road to reach the ferry ghat from

existing village road without stepping into the lands in possession of the petitioners.”

The BL&LRO who assisted the Special Officer in his report has also indicated that there is another approach road appertaining to Plot No.77 through which any person can reach to the jetty from the main road. The learned Single Judge while accepting the said report also watched videograph clip of walk from the river to the road and arrived at a conclusion that it is possible for few people at least to reach the Ferry Ghat without encroaching any land on which a claim has been made by the appellants. In this appeal, Mr. Kalyan Bandyopadhyay, learned Senior Counsel appearing for the appellants has submitted that his client is not objecting to the auction but is apprehensive about the possible encroachment of the state respondents that might take place consequent upon the finalization of the auction as the land on the opposite bank where the Ferry Ghat is presently operating belongs to the petitioners. We do not think that this aspect would occupy us any more as it is needless to mention that if the land actually belongs to the petitioners and is evident from the record of rights and the other documents that the land on the opposite bank of the river belongs to the petitioner the Government has to follow the procedure prescribed in law to acquire the land if needed and not otherwise.

On such consideration, we uphold the order under appeal. However, we direct the petitioners/appellants to

deposit Rs.1 lakh as an arrear licence fee which the Government had suffered from 2004 at least. The claim could have been more going by the revision in licence fees since the year 2004. This amount shall be deposited within one week from date otherwise the said amount may be recovered as arrears of land revenue.

The appeal being MAT 429 of 2020 along with applications being CAN 1 of 2020 and CAN 2 of 2020 are disposed of.

All parties are to act on a website copy of this order on the usual undertaking.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)