

FMA 511 of 2020
With
CAN 1 of 2019 (Old CAN No. 12046 of 2019)

Chhoni Mahammad Mondal & Ors.

-Vs-

State of West Bengal & Ors.

Mr. B. P. Banerjee
Mr. Aniket Mitra
Mr. P. Baidya

... for the Appellants

Mr. Sandip Ghose
Mr. Sudarsan Roy
Mr. Debayan Ghosh ... for the State North Dum Dum Municipality

Party/Parties is/are represented in the order of their name/names as printed above in the cause title.

Mr. Banerjee, Learned Counsel, appears for the appellants. The appellants were the writ petitioners in WP 7014(W) of 2019 (for short, the said writ petition). The writ petition was finally decided by the Hon'ble Single Bench on the 18th of July, 2019. The Hon'ble Single Bench, *inter alia*, was of the view that the case canvassed by the writ petitioners/the present appellants requires to be established before the appropriate forum which is the Civil Court.

At issue before the Hon'ble Single Bench was the prayer of the appellants for a direction upon the Respondents/North Dum Municipality to vacate an area of around 29 Satak of land situated at Mouza

Birati, J.L. No. 7, Khatian No. 434 (457), Touzi No. 172/174, C.S. and R.S. Dag No. 441, P.S.-Nimta, Holding No. 369/757 (old 717), Ward No.18 under North Dum Dum Municipality (for short, the said land).

The appellants reiterate their arguments before this Court, which was also the stand before the Hon'ble Single Bench, that they are the inheritors of the said land from their late father.

However, due to the inability of the petitioners to produce a scrap of material in support of such inheritance of the entire or, a portion of the said land, before the Hon'ble Single Bench, the Hon'ble Single Bench refused to exercise its writ jurisdiction.

The Hon'ble Single Bench also opined that the writ petition was bad for non-joinder of necessary parties since, in the huge interregnum of time between the death of the claimed predecessor-in-interest/the late father of the writ petitioners, the said land had changed several owners through *bona fide* deeds of transfer and a portion of the said land came under the occupation of the Respondents/the North Dum Dum Municipality for utilisation thereof. It also requires mention that a multi-storied building has been constructed over a portion of the said land.

The Hon'ble Single Bench was of the view that the writ petitioners/the appellants were placing onus

on the Writ Court to collect evidence on their behalf and/or to do a fact finding exercise without at the first instance being able to show any scrap of material whatsoever in support of their claim to inheritance.

Mr. Ghosh, Learned Counsel appearing for the Respondents/the Dum Dum Municipality, submits that the appellants are trying to recover their so-called civil rights through this petition while actually having forfeited such civil rights, if at all available to them, due to the long period which has elapsed after the death of their late father. In the meantime the land has been utilised and the conflict which the writ petitioners/the appellants pose before the writ Court and, also this Appellant Bench is between their claim to inheritance *versus bona fide* purchasers for value of the said land. Such conflict, Learned Counsel submits, can only be resolved, as correctly held by the Hon'ble Single Bench, before a competent civil forum. It needs no iteration that the said land has been mutated in favour of several persons in the interregnum and copies of several deeds were produced both before the Hon'ble Single Bench and also before this Court.

The attention of this Court is also drawn by Mr. Ghosh to paragraph 7 of the writ petition which, *inter alia*, reads as follows:

"7. That the petitioners came in contact with one social worker cum activist namely Biplab Kumar Choudhury. The petitioners had shown such documents to Shri

Choudhury and thereafter, the petitioners reposed all faith and confidence upon Shri Choudhury and requested him as to whether Shri Choudhury is agreeable to mitigate the hardship of the petitioners and to ascertain in what manner the said permanent construction has been undertaken by the Municipality, in respect of the premises in which the petitioners is holding some document of ownership. Shri Choudhury took some time in the matter and thereafter, Shri Choudhury informed the following facts to the petitioners:"

The further point is taken by Learned Counsel for the Respondents/North Dum Dum Municipality that the said Biplab Kumar Choudhury who find mention in paragraph 7 (supra), is the legal busybody and, it is alleged that within the North Dum Dum Municipality area/jurisdiction the above named person has initiated several vexatious litigation connected to land. Such stand is, however, denied by Mr. Banerjee.

Since this Court does not intend to detain this appeal further, the merits and demerits of the stand taken by Learned Counsel for the North Dum Dum Municipality *qua* paragraph 7 (supra) connected to the said Mr. Biplab Kumar Choudhury, is left for the Respondents/the North Dum Dum Municipality to bring to the attention of any appropriate Court or forum if such action so demands in future.

In the backdrop of the above discussion, the stand taken by Mr. Banerjee that the Hon'ble Single Bench ought to have called for affidavits before

deciding to dispose of the writ petition itself, does not appeal to the judicious commonsense of this Court. The issue of affidavits could have only arisen in the event the writ petitioners/the appellants could have produced a scrap of material in support of their claim to inheritance and, in the event such material exists, it needs no reiteration that such material has to be first established before the competent civil forum.

Accordingly, **FMA 511 of 2020** along with **CAN 1 of 2019 (Old No. CAN 12046 of 2019)** stand **dismissed**.

However, there will be no order as to costs.

Since this discussion has proceeded on the basis of the materials on record, this Court is not required to call for affidavits either and, therefore other allegations made are deemed to be denied and disputed.

All parties to act on a server copy of this order duly obtained from the official website of the Hon'ble High Court, Calcutta.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Hiranmay Bhattacharyya,J.) (Subrata Talukdar,J.)

