

03.02.2021

Court No. 02
Item No. DL – 39
nandy

(DISPOSED OF)

(ASSIGNED)

MAT 296 of 2019
with
CAN 2 of 2019
(CAN 2278 of 2019)

Banibrata Khan & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Sourav Sen, Advocate
Mr. Tanoy Chakraborty, Advocate
Mr. Chandak Dutta, Advocate

.....for the Appellants

Mr. Partha Pratim Roy, Advocate
Mr. Ram Chandra Guchait, Advocate

.....for the State

This appeal is directed against the judgement and order dated December 11, 2018, passed by the learned single Judge.

The writ-petitioner in the writ-petition prayed, *inter alia*, as follows:-

“(a) Issue a writ in the nature of mandamus commanding the respondents and its men, agents and assigns to immediately demolish the said construction by the name of “Bhandaria Upshasatra Kendra” and deliver back the possession to the petitioners in its original position and to act in accordance with law by acting in the manner as stated hereinabove;

(b) Issue a writ in the nature of mandamus commanding the respondents and its man, agents and assigns to immediately pay compensation of rupees one crore and to act in accordance with law by acting in the manner as stated hereinabove;”

The learned single Judge dismissed the writ-petition on the ground that the dispute relates to a land matter and possession thereof and as such the said disputed questions of fact cannot be decided in a writ-proceeding.

It appears that the learned Judge in dismissing the writ-

petition took into consideration a report dated March 28, 2011 of the relevant Block Land and Land Reforms Officer annexed to the writ-petition and a note-sheet prepared by a Sub-Assistant Engineer (Civil) of Development and Planning Department wherein it was stated that the impugned construction had been made on a vested land.

It appears that the writ-petition was taken up for hearing on November 11, 2014 before a learned single Judge and an interim order was passed to the following effect:-

“It was submitted on instruction by the learned Counsel appearing for the State that the land of the petitioner was neither acquired nor encroached and no construction was made over the land.

The Block Land and Land Reforms Officer, South 24-Parganas who is present before this Court is directed to demarcate the land belonging to the petitioner within three weeks from date. The writ petitioner would be permitted to keep one Amin of his own so that he can assess or verify whether measurement is being taken properly or not. Demarcation to be made by the Government Amin to be appointed by the concerned B.L. & L.R.O. If any encroachment was made that would be removed. The concerned B.L. & L.R.O. is to submit a report after four weeks.

The concerned B.L. & L.R.O. undertakes before this Court that this order would be complied with and survey work be carried out within three weeks from date and on such undertaking the order of withholding his salary passed on 3rd November, 2014 is recalled.

The date of measurement and demarcation is fixed on 20th November 2014.

Let the matter appear after four weeks.”

The writ-petitioner alleges that in spite of repeated request, the aforesaid order has not been complied with. The said order dated November 11, 2014 was passed after due consideration of the report dated March 28, 2011, by the concerned Block Land and Land Reforms Officer and since the Court was not satisfied with the said report, the said interim order was passed.

In our view, the learned single Judge was not justified in dismissing the writ-petition ignoring the non-compliance of the order dated November 11, 2014 passed in the writ-petition. When an interim order was passed directing the respondent authorities as well as the writ-petitioner to take certain steps with regard to the measurement of the disputed land and to demarcate the same by a Government Officer, it was incumbent on the part of the respondent authority to comply with such order.

An interim order is passed in aid of the final order. An interim order is binding upon the parties to the proceedings even if the same is wrong. One must comply with the interim order unless the same is recalled or set aside. Principle of *res judicata* also applies to interim orders passed in a lis.

The Supreme Court, in ***Tayabhai M. Bagasaralla Vs. Hind Rubber Industries Pvt. Ltd.*** reported at **1997 (3) SCC 443** has held that violation and disobedience to an interim order is punishable even after the question of jurisdiction was decided against the plaintiff provided violation was committed before decision of Court on the question of jurisdiction.

It is, therefore, legally unacceptable to disregard an interim order which was in force at the time of disposal of the lis.

There should be certainty and predictability, in the administration of justice. If a Judge, without any just reason, disposes of a writ-petition by taking a different stand from his predecessor who had passed an interim order directing the parties to carry out some duties, then there will be a lack of certainty and predictability in a decision making process. A litigant should not be taken by surprise due to lack of

consistency and uniformity in dispensation of justice by a Court of law.

We are of the opinion that the order impugned is not sustainable. The writ-petition being **WP 36086 (W) of 2013** is, therefore, **restored**.

We direct the relevant Block Land and Land Reforms Officer to comply with the said order dated November 11, 2014 passed in the writ-petition and accordingly submit a report before the learned single Judge within a period of six weeks from date.

The writ-petition will be decided afresh on merit after taking into consideration the report to be filed by the concerned Block Land and Land Reforms Officer, in terms of this order.

With these observations, the appeal being **MAT 296 of 2019** is **allowed** and the connected application being **CAN 2 of 2019** (CAN 2278 of 2019) is **disposed of**.

(Harish Tandon, J.)

(Kausik Chanda, J.)

