

47 17.12.21

Ct. No. 04

Akd

W.P.L.R.T. 69 of 2021

Bazir Hossain

Vs.

The State of West Bengal & Ors.

Mr. Golam Mastafa,

Mr. Tarasankar Samanta.

... for the petitioner.

Mr. Sirsanya Bandopadhyay,

Mr. Arka Kumar Nag.

... for the State.

Mr. Biswarup Nandy.

... for the respondent

nos. 5 & 6.

Ms. Manali Das.

... for the respondent no. 7.

The instant writ petition has been filed solely on the ground that the Court while accepting the affidavit-in-opposition filed by the respondent nos. 5 and 6 did not afford an opportunity to the petitioner to controvert the allegations made therein.

It transpires from the record that at the time of entertaining the tribunal application on 23rd February, 2021 the direction was passed upon the respondents to file affidavit-in-opposition within a specified day and liberty was also given to the petitioner therein to file affidavit-in-reply thereto. The matter was fixed on 24th September, 2021. On the same day while passing the impugned order the tribunal noticed from the affidavit-in-opposition filed by the respondent nos. 5 and 6 that the predecessor-in-interest of the writ petitioner, namely Asia Bibi registered and executed a deed of sale in favour of the vendor of the respondent nos. 5 and 6 in the year 1963. The vendor of the respondent nos. 5 and 6 subsequently sold, transferred and conveyed the property to the father of the respondent nos. 5 and 6 by executing and registering a deed dated 12th

January, 1972.

It was thus contended by the said respondents that once the petitioner has lost his title to the property as his mother sold the same, there is no merit in the claim of the writ petitioner pertaining to correction of the Record of Rights and mutating his name therein.

The tribunal after taking note of the aforesaid facts and the sale deed annexed to the affidavit-in-opposition held that since the petitioner has no right, title and interest, it would be an idle formality to direct the Block Land & Land Reforms Officer to consider the representation seeking mutation of his name upon correction of the Record of Rights.

It is no doubt true that the copy of the affidavit-in-opposition was served upon the learned Advocate representing the writ petitioner at the time when the matter was called on by the tribunal on 24th September, 2021. No opportunity was given to file affidavit-in-reply and the matter came to be disposed of on the findings as indicated hereinabove.

Similar point is raised in the instant writ petition, i.e. denial of an opportunity to file affidavit-in-reply controverting the factum of deed of sale executed by the mother.

We invited the learned Advocate representing the writ petitioner to enlighten the grounds on which such challenge can be made.

It is submitted by the learned Advocate for the petitioner that the said document is sham, fake and fraudulent and, therefore, no title could be passed on the basis thereof. It is further submitted that the executant of the said deed, i.e. the mother of the writ petitioner, was a literate and educated lady and there is doubt on genuinity of the said deed, which contains left thumb impression.

Such being the ground of challenge to the said deed, we do not find any infirmity or illegality in the order of the tribunal dismissing the tribunal application as it had no jurisdiction to declare any transaction, i.e. the sale deed, to be void or illegal and consideration of demur against the said deed is beyond the jurisdiction, authority and powers conferred upon the tribunal. Therefore, there is no impediment on the part of the tribunal to dismiss the said application holding that once a document manifests that the title has passed from the predecessor of the petitioner, the prayer for mutating his name upon correction of the Record of Rights is not maintainable.

In view of the above, the instant writ petition is dismissed.

There will however be no order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)