

11.01.2021

Ct. No. 24

Item No. 07

pk.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

WPA No. 20775 of 2019

Asit Kumar Chakraborty & Anr.

vs

State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharyya, Sr. Advo.,
Md. Samim Ahammed,
Mr. Arka Maiti,
Ms. Saloni Bhattacharyya for the petitioners

Mr. Lalit Mohan Mahata, Sr. Govt. Advo.,
Mr. Prasanta Behari Mahata for the State

Mr. Tapas Kr. Ghose,
Mr. Tanmoy chowdhury for the respodt. Nos. 4-6

Md. Yasin Ali,
Mrs. Tapati Samanta for the respondent no. 7

The petitioner on an earlier occasion filed a writ petition being W.P. No. 13230 (W) of 2018 challenging the notice for acquisition of the Sishu Bigyan Kendra dated 3rd February 2017 issued by the Chairman of the Hooghly-Chinsurah Municipality.

The court by an order dated 14th December 2018 set aside the said notice for acquisition. The court categorically observed in the said order that it was for the Municipality to take appropriate proceedings for eviction, in the event, the petitioners had no right, title or interest in the property. The court clearly mentioned that the Municipality could not take forcible possession of such property from the petitioner on the basis of such notice.

In the instant case the grievance of the petitioners is that even though the court directed that the Municipality cannot take forcible possession of the property, but the Municipality is not relinquishing the property in favour of the petitioners, even though the impugned notice for acquisition has been set aside by the court.

The learned advocate appearing for the respondent no. 7 submits that the action of the Municipality in issuing the notice of acquisition and forcibly entering into the possession of the premises in question is absolutely illegal.

The learned advocate for the Municipality submits, upon instructions, that possession of the property was taken way back on 14th February, 2017. The petitioners do not have any authority to occupy the said premises at present.

From the submissions of the parties it appears that the Municipality entered into the possession of the property in question on 14th February 2017 pursuant to the notice for acquisition dated 3rd February 2017. As the notice for acquisition dated 3rd February 2017 has been set aside by the court, the Municipality was duty bound to hand over the possession of the property in question to the petitioners.

The Court categorically mentioned that the Municipality can take appropriate proceedings for

eviction, in the event, the petitioners did not have any right, title or interest in the property. The Municipality has no other option, at this stage, but to hand over possession back to the petitioners and, thereafter, if the Municipality is of the opinion that the petitioners does not have any right, title or interest in the property, then it will be open for the Municipality to initiate appropriate proceedings for eviction against the petitioners. The principle being that no person can be dispossessed without the due process of law. Prior to taking any steps in accordance with law, the petitioners cannot be forcibly dispossessed from the premises in question.

Accordingly, the Municipality is directed to act in strict compliance of the order passed by the Court on 14th November 2018, in the earlier writ petition and return possession of the property to the petitioners within a period of four weeks from the date of communication of a copy of this order.

It is made clear that this court has not decided upon the right, title or interest of any of the parties in the writ petition and it will be open for all the parties to agitate with regard to right, title and interest before the appropriate forum.

WPA 20775 of 2019 is thus disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)