

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS**

**W.P.L.R.T 2 of 2022
Mor Selim Molla & Ors.
Vs.
The State of West Bengal & Ors.**

**with
W.P.L.R.T 73 of 2021
Zorina Bibi
Vs.
The State of West Bengal & Ors.**

**with
W.P.L.R.T 74 of 2021
Istiq Ahmed Laskar & Ors.
Vs.
The State of West Bengal & Ors.**

Appearance:

For the Petitioners : **Mr. Mrinal Kanti Ghosh, Adv.**

For the State : **Mr. Chandi Charan De, Adv.
Mr. Anirban Sarkar, Adv.**

Judgment On : **23.12.2022**

PRASENJIT BISWAS, J.

The instant appeal is preferred by the petitioners being aggrieved by and dissatisfied with the order dated 08.11.2021 passed by the West Bengal Land Reforms and Tenancy Tribunal in M.A No. 377 of 2014 (O.A No. 554 of 2013).

Whereby and whereunder the learned Tribunal dismissed the contempt application filed by the petitioners/appellants against the Respondents under section 15 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1977 alleging deliberate violation of the order passed by the Tribunal dated 28.11.2013.

Before we proceed to examine the legal niceties of the submissions and the impugned order dated 08.11.2021, it will be appropriate to notice the necessary facts giving rise to the present appeal.

One Birendra Krishna Dutta and others were the R.S. recorded tenants in respect of some plots situated within Mouza Ramkrishnapur under Joynagar Police Station within District 24 Parganas being R.S. Khatian No. 663. In the remark column of the said Record of Rights the name of Hafez Naskar, Nechar Ali Naskar and Golam Kader were recorded as 'Jordong'. Golam Maula Naskar son of late Hafez Naskar along with Nechar Ali Naskar and two sons of late Golam Kader Naskar filed a Title Suit being No. 305 of 1974 against the State of West Bengal and others before the Civil Court at Baruipur praying for declaration of title and permanent Injunction in respect of plots where the names of their predecessor in interest were recorded as 'Jordong'.

The said Title Suit being No. 305 of 1974 was decreed by the Civil Court in favour of the plaintiffs. Thereafter the decree holders and their heirs sold and transferred the plots in question in favour of these petitioners and their predecessors by several registered deeds. An application was submitted before the concerned Block land and Land Reforms Officer by the petitioners for correction of the relevant record of rights. Concerned B.L. and L.R.O disposed of the applications on 06.09.2012 without passing any order for correction of the relevant Record of Rights. The petitioners knocked the door of the Tribunal challenging the order dated 06.09.2012 passed by the B.L. and L.R.O in O.A. No. 554 of 2013.

The Tribunal disposed of the said case thereby setting aside the order dated- 06.09.2012 with direction upon the authority to consider the mutation case afresh but the concerned B.L. and L.R.O was sitting tight over the matter and did not take any steps as directed by the Tribunal. Finding no other way the petitioners filed an application for contempt being No, 377 of 2014 before the Tribunal. After hearing of both sides the Tribunal dismissed the contempt application by passing the impugned order dated 08.11.2021.

The petitioners/appellants challenged the impugned order dated 08.11.2021 passed by the tribunal before this court by filing a Writ Petition being No. W.P.L.R.T 75 of 2021 and as some mistakes have been made in the pleadings permission was given to the petitioners upon their prayers by this Court to withdraw the said writ petition with liberty to file afresh on the selfsame reliefs. So, this application has been filed by the petitioners.

We have considered the rival submissions advanced by both the parties.

Following points are formulated by this Court in disposing of this appeal: -

- (1) Whether a quasi-judicial authority can go beyond the decree of the Civil Court and the final judgment of the Tribunal holding the aforesaid judgments are *per incurium* and *per se* illegal having not noticed the core principle relating to the perfection of title by adverse possession?
- (2) Whether the Tribunal while exercising the contempt jurisdiction can sit over its own order or the order passed by its predecessor in office as an appellate court or in exercise power of review?
- (3) Whether the decision of the tribunal passed in an earlier round of litigation between the parties has any binding force on the parties or anyone of them in a subsequent round of litigation, more particularly, when the issue has been decided finally? In other words, whether the principle of *res judicata* or the estoppels of issue would operate against the party if the points, which were in issue in an earlier round of litigation before the Tribunal was finally decided?

All the above points are taken up together for discussion as they are interlinked with each other for shake of brevity.

Section 9 of the Code of Civil Procedure, 1908, confers jurisdiction over the civil courts to adjudicate upon all suits of civil nature, except such

suits the cognizance of which is either expressly or impliedly barred. In other words, whenever the object of proceedings is enforcement of civil rights, a civil court would have jurisdiction to entertain the suit unless cognizance of the same is barred through a legislative instrument. Originally the term "court" meant, among other meanings, the Sovereign's palace. It has acquired the meaning of the place where justice is administered and further has come to mean the persons who exercise judicial functions under authority derived either immediately or mediately from the Sovereign. All *quasi* judicial authorities are not courts. The term 'judicial' does not necessarily mean acts of a Judge or Legal tribunal sitting for the determination of matters of law, but for the purpose of this question, a judicial act seems to be an act done by competent authority upon consideration of facts and circumstances and imposing liability or affecting the right of others. When the question of carrying out mutation entry comes the best piece of evidence has to be considered. In cases where the civil court had an occasion to deal with the claims of the parties in relation to their right title and interest over immovable properties the verdict of civil court would bind the revenue authorities and mutation entries should be carried out in tune with the verdict of the Civil Court.

In the case in hand, it is not in dispute that the petitioners had produced judgement and decree of civil court while requesting for entry in their favour in record of rights before the Block Land and Land Reforms Officer but he has demonstrated ignorance of law in not mutating their names. It is also to be noted that in case there is application by the appellants for mutation of entries in their favour based on decision

pronounced by civil court then certainly the revenue authority cannot ignore such application nor can refuse to carry out the mutation in accordance with the declaration of right in favour of the party by virtue of such decision of the Court. A decision is given *per incuriam* when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow.

The Tribunal, after considering the grounds raised in appeal, decided the appeal and passed the order. The tribunal has already set aside the order of the B.L and L.R.O. with direction to hear the mutation case afresh. If anyone has any grievance against the order of the Tribunal, they can go before the higher forum by filing appeal. The Tribunal cannot review its own order and reviewing of the order will tantamount to rehearing of the appeal. This power is not vested with the Tribunal. The Tribunal after considering the submissions of both the parties has passed the earlier order discussing the provisions of the law.

In our opinion the tribunal cannot review its own order in the garb of power vested to it at the time of hearing of contempt application filed by the petitioners. The tribunal exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the order. The tribunal exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the tribunal at the time of passing the earlier order. Flouting an order of the tribunal would render the party liable for contempt. While dealing with an

application for contempt, the tribunal cannot traverse beyond the order, non-compliance of which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot test correctness or otherwise of the order or give additional directions or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings.

By the judgement and decree the learned civil court decreed the suit against the State of West Bengal and declared that the plaintiffs had right, title and interest over the properties in question. Since the prayer of the petitioners for correction of record of rights were not entertained by the concerned Block Land and Land Reforms Officer an application was preferred before the West Bengal Land Reforms and Tenancy Tribunal and the said Tribunal directed the concerned authority to consider the mutation case afresh within time limit as mentioned in the said order. As the authority concerned did not comply the direction of the Tribunal these petitioners filed an application for contempt being M.A. No. 377 of 2014. In connection with aforesaid application the concerned Block Land and Land Reforms Officer submitted a report dated 29.06.2015 as compliance. It reflects from the said report that it has not followed the direction as made by the Tribunal dated 28.11.2013 and ultimately the contempt application as filed by the petitioners was dismissed by passing the impugned order.

We are of the opinion that the tribunal committed gross mistake in holding that the authority concerned has power and authority to question about the decree passed by the competent court of law. The learned tribunal also committed error in not considering the fact that in earlier

occasion it gave direction upon the authority concerned to consider the mutation case as filed by the petitioners afresh in the light of judgement and decree passed by the competent civil court in connection with Title Suit No.305 of 1974.

In the midst of hearing it was brought to our notice about a circular being Memo No.26/4794/C/94 dated 19.09.1994 issued by the office of the Director of Land Records and Surveys and Jt. Land Reforms Commissioner, Government of West Bengal wherein it is categorically stated about the process of recording the names of adverse processors in the record of rights. It is stated in the said circular as follows-

“The incidence of such illegal transfer of land should be governed by article 65 of the Limitation Act, (read with Article 64 ibid)

When the present petitioner i.e. the present purchaser claims title and alleges previous possession of his predecessor and subsequent dispossession of the recorded owner, it is for him to show that his predecessor had been in possession of the properties for more than 12 years since the date of recording the name of this predecessor as adverse possessor and his predecessor gained a good title by an uninterrupted adverse possession over 12 years.

However this is further explained that if exclusion was done by different trespassers it will not help the present purchaser, provided there was a continuity in the period of exclusion for more than 12 years, when the purchaser claims relief both on proprietary and possessory title.

The onus is on the purchaser to prove the proprietary title. It is better that Civil Court should decide the title of the purchaser from the adverse processors”

Therefore there is no escape from not complying with the judgement and decree passed by the civil court in respect of making necessary corrections in the record of rights. We find that the tribunal committed mistake and error by observing that with due diligence the concerned authority tried to dispose of the case referring various statutory provisions and judicial pronouncements of the Hon’ble Apex Court and Hon’ble Calcutta High Court for consideration of applicant’s mutation cases afresh according to his understanding of the relevant provisions of law which may be right or erroneous. The learned Tribunal ought to have directed the concerned B.L. and L.R.O to make necessary correction in the Record of Rights in terms of the decree passed by the learned Munsiff, 3rd Court, Baruipur in Title Suit No. 305 of 1974 since the said judgement and decree has not been set aside by any higher forum. Moreover, we find that the concerned authority has no capacity to question about the decree passed by a civil court. When the question of right, title, interest and possession of the plaintiffs in respect of the property in question has already been adjudicated by a civil court then there is no scope to doubt or dispute the position that the decree of the civil court is not binding and the tribunal should not be allowed to question about the said judgement and decree.

It is further lighted that although the tribunal directed the concerned authority by passing an order dated 28.11.2013 to decide the mutation

case afresh in the light of judgement and decree passed by the civil court but it deliberately and wilfully violated the said order of tribunal.

Therefore we find that there is no merit in the said impugned order and it is liable to be set aside.

Accordingly, the impugned order dated 08.11.2021 passed by the learned Tribunal passed in connection with case no M.A. 377 of 2014 (O.A. 554 of 2013) is hereby set-aside.

Thus we dispose of this application by directing the concerned Block Land and Land Reforms Officer to make necessary correction in the record of rights in terms of decree passed by the Munsif, 3rd Court at Baruipur in Title Suit No.305 of 1974.

The said corrections must be effected within two months from the date of communication of this order to the Block Land and Land Reforms Officer, Joynagar-1, District- South 24 Parganas.

With the aforesaid directions, the writ petition stands allowed.

We make no order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)