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25-07-2022
debajyoti
(Ct. no.06)

FMA 752 of 2019
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IA NO:CAN/1/2022

**Prakas Kumar Guchhait @ Prakas Chandra Guchhait
@ Prakas Guchhait
Vs.
The State of West Bengal & Ors.**

Mr. Ramdulal Manna,
Mr. Debnarayan Patra,
Mr. Debasish Kundu
... For the Appellant.

Mr. Uttam Kumar Bhattacharyya
... For Respondent Nos.2 and 3.

Mr. Balai Lal Sahu,
Mr. Kaustuv Mishra
... For Respondent No.7.

By consent of the parties, the appeal and the application are taken up together for hearing.

A judgment and order dated July 10, 2018 is the subject matter of challenge in this appeal. By the impugned judgment and order, the writ petition of the appellant was dismissed by the learned Single Judge.

The appellant says that he was the owner of 0.08 decimals of land in the locality in question. In the year 1989, by way of two registered deeds, he sold 0.04 decimals and 0.02 decimals, aggregating 0.06 decimals, of land to the mother of the private respondent no.7. Therefore, he continued to own 0.02 decimals of land.

To access the public road from his plot of land, the petitioner/appellant had to walk across a plot of land, which belonged to the Purba Medinipur Zilla Parishad. Sometime in the year 2000, the Zilla Parishad took steps

for settlement of that plot of land which was adjacent to the property of the petitioner. Ultimately, that plot of land was settled in favour of the writ petitioner by execution of a lease deed. Initially, the said lease was for five years. After expiry of the lease, there was no formal renewal of the lease, but the Zilla Parishad continued to accept rent from the writ petitioner and the writ petitioner continued to have his right of way over the said land of the Zilla Parishad. This apparently continued till 2013.

It appears that subsequently, the said plot of land of the Zilla Parishad was settled in favour of the respondent no.7. Being aggrieved, the writ petitioner approached this Court by filing W.P.1533 (W) of 2016. The said writ petition was disposed of by an order dated June 28, 2016, the operative portion whereof reads as follows:

“ Considering the submissions made this writ application is disposed of with a direction upon the Zilla Parishad that in the event of future allotment of the land, a transparent procedure will have to be followed, giving an opportunity to the petitioner to participate in the process. The decision for allotment of the land should in the circumstances be passed by a reasoned order. If there are some allegations against the petitioner they should be communicated to the petitioner and dealt with by the Parishad upon giving an opportunity to be heard. ”

Subsequently, the Savadhipati of the Purba Medinipur Zilla Parishad passed an order dated January 27, 2017, the operative portion whereof reads as follows:

“ That the matter was placed before the meeting Bon-o-Bhumi Sanskar Sthayee Samity and temporary settlement was sanctioned in favour of Avijit Samanta for the period of 1421-1422 B.S. and rest (864-648)=216 sq.

feet land has been sanctioned in favour of Sri Prakash Guchhait.

The copy of resolution is made part of the producing.

It is the settled norms of the Purba Medinipur Zilla Parishad that actual occupiers would have get the preference of temporary settlement for two years.

That being aggrieved and dis-satisfied with the resolution the petitioner moved before the Hon'ble High Court Calcutta and Hon'ble High Court is pleased to direct the Purba Medinipur Zilla Parishad Authority to dispose of the matter transparently after giving opportunity to the petitioner.

The matter was further enquired into and seconded by the resolution of the Bon-o-Bhumi Sanskar Sathye Samiuty on 25.02.2015 and the possession of Sri Abhijit Samanta has been confirmed.

The petitioner alleged that Abhijit Samanta forcefully dispossessed him from his possession. But the matter was otherwise.

Sri Prakash Guchhait sold the adjacent plot 202 measuring 06 dec. out of 08 dec. to the mother of Sri Abhijit Samanta and surrendered the possession of land of the Zilla Parishad land. Sri Abhijit Samanta has been possessing Land Temporary short term settlement was granted after maintaining due formalities. So it is transpired that the instant petitioner has violated the terms and condition of the agreement and his prayer can not be entertained any longer. ”

Being aggrieved by the said order, the appellant approached the learned Single Judge in the present round of litigation.

The learned Judge recorded the history of the case and also noted that two civil suits were pending, one filed by the present writ petitioner and the other by the mother of the respondent no.7. In both the suits, the

disputed plot of land is involved. The learned Judge further recorded that several disputed questions of fact are involved, for adjudication of which, the Writ Court is not the appropriate forum. The learned Judge, accordingly, dismissed the writ petition.

Before us, Mr. Manna, learned advocate, appearing for the writ petitioner/appellant, says that his basic grievance is that without having a right of way over the disputed plot of land belonging to the Zilla Parishad, which has been sought to be settled in favour of the respondent no.7, the writ petitioner cannot enjoy his own property. He runs four shops on his property and partly on the land of the Zilla Parishad settled in his favour and unless his customers have access to his shops by crossing the land of the Zilla Parishad, his business will shut down.

Learned advocate for the Zilla Parishad says that sufficient land has been sanctioned in favour of the writ petitioner/appellant which will grant the appellant access from the public road to his property and the shops run by him. This is also reflected in the order dated January 27, 2017, challenged before the learned Single Judge.

Learned advocate for the respondent no.7 says that the settlement of the disputed land in favour of the respondent no.7 is still in subsistence.

We are of the view that while the learned Single Judge was right in dismissing the writ petition in view of involvement of diverse disputed questions of fact, the Zilla Parishad should also ensure that the appellant gets access from the public road to his shops, as otherwise, the appellant will not be in a position to enjoy his own

property. The Zilla Parishad, through his learned advocate, says that it will ensure that the appellant has such access. If the appellant has to make any payment for such access, the same shall be paid by the appellant to the Zilla Parishad. If any formal document is required to be executed in favour of the appellant, the Zilla Parishad shall do so.

With the above observations, the appeal and the connected application are disposed of.

Affidavits not having been called for, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Rai Chattopadhyay, J.) (Arijit Banerjee, J.)