

28.03.2022

WPLRT 13 of 2022

Court : 04
Item : PB-22
Matter : WPLRT
Status : DO
Transcriber: nandy

The State of West Bengal & Anr.
Vs.
Sunil Kumar Maity & Anr.

Mr. Chandi Charan De, Ld. A.G.P.
.....for the Petitioner/State
Mr. Debasish Das, Advocate
.....for the Respondent Nos. 1 and 2

The stale claim is sought to be resurrected by approaching this Court with an application under Article 226 of the Constitution of India.

The order of vesting under Section 14(P) of the West Bengal Land Reforms Act and consequent whereupon the issuance of 'patta' was the centre of dispute in the previously instituted proceeding before this Court at the behest of the respondents. The respondents claimed to have acquired the right, title and interest in respect of the subject land on the strength of deed of purchase in the year 1967.

Since the vesting order was passed and the 'patta' was issued in favour of that party, approach was made to this Court under Article 226 of the Constitution of India being Civil Rule No. 10695 (W) of 1981. The said writ-petition was disposed of upon recording the findings that the apprehension has been shown by the respondents herein that the possession of the said land would be taken treating the same as vested land in an unlawful manner. The single Bench held that a right has been created upon creation of a tenancy and, therefore, the State cannot

treat the said land as a vested land and settled in favour of the third party.

The matter was carried to a Division Bench and the Division Bench held that the State committed grave error in disputing the transaction of 1967 by invoking the provisions contained under Section 14(P) of the said Act when the said provision stipulates that the transfer effected after August 7, 1969 shall come within the purview thereof. Ultimately, the Division Bench held that any transfer effected prior to the said cut off date provided under Section 14(P) of the said Act is neither effected nor would come within the purview thereof.

Taking lead from the positive findings of the Division Bench, the Sub-Divisional Officer, Haldia was moved with the proceeding for annulment being Annulment Case No. 1(R) of 1987. The said proceeding was disposed of on April 8, 1991 after taking note of the observations of the Division Bench and declaring the settlement having annulled. Despite the said order having passed, there was no steps taken by the authorities which constrained the petitioner to move the West Bengal Land Reforms and Tenancy Tribunal by filing OA 3747 of 2014 seeking a direction upon the competent authority to correct the record of rights on taking note that the 'patta' had already been annulled.

By the impugned order dated April 28, 2015 the said tribunal application was disposed of directing the

Block Land and Land Reforms Officer, Nandigram-II, District – Purba Medinipur to correct the record of rights upon recalling the ‘pattas’ so issued and to complete the entire exercise within three months from the date of communication of the said order.

The plight still continues with the respondents as despite the said order, there is no correction of the record of rights, which invited the contempt application to be taken out before the Tribunal.

The learned Advocate the appellant submits that before the Tribunal, undertaking was given by the State to comply the said order yet in blatant violation thereof the present writ-petition is filed.

There is no ambiguity in our mind that there has been a long delay in approaching this Court assailing the order dated April 28, 2015. Our endeavour has failed to find out any explanation having offered for such enormous delay in approaching this Court. The meaningful reading of the averments made in the writ-petition would reveal that a plea is sought to be projected that the proceeding was initiated under Section 14T(3) of the said Act against the deity which was disposed of by passing an order and, therefore, such proceeding was not disposed of against the vendor of the petitioner being the Sebayat. The challenge is sought to be made to the transfer of the land effected by the vendor.

The aforesaid plea was available when the writ-petition was filed before this Court when the Division Bench disposed of the proceeding. Even if we consider that such proceeding was initiated much after the order of the Division Bench yet the same has to be construed as an afterthought for the simple reason that an attempt is shown to get away with the order of the Division bench or to nullify the said order which remained binding on the parties. It is definitely an attempt on the part of the authority to take circuitous route to frustrate the decision of the Division Bench. The authority was conscious that the order of vesting under Section 14(P) of the said Act has been declared invalid and the 'patta' issued thereafter was subsequently annulled.

Fundamentally when the foundation has been shattered/broken the structure standing thereupon cannot stand and must fall with it. The conduct and the attitude of the State officials in taking all possible steps to resurrect a decision of vesting and to declare the 'patta' being an outcome thereof is highly deplorable and no prudent man would allow such action to be taken.

Our attention is further drawn to the fact that the concerned officials gave undertaking before the Tribunal that they would comply the order dated April 28, 2015 yet they have taken a complete rebound and filed the instant application challenging the aforesaid order. The delay and laches are one of the

factors where the High Court shall refuse to exercise its discretion under Article 226 of the Constitution of India. Though there is no period of limitation provided under the Limitation Act for maintaining an application under Article 226 of the Constitution but the law has been evolved when a stale claim is sought to be resurrected after an enormous delay where the Court may refuse to exercise its discretion. There is a complete silence in the pleadings so far as the delay is concerned and we do not find any sufficient reasons to permit such stale claim to be entertained after such an enormous delay.

The writ-petition is devoid of merit. The same being **WPLRT 13 of 2022** is hereby **dismissed**. No order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

