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WPLRT 20 of 2022

Ct. No. 04

Akd

**Devadidev Constructions Private Limited & Anr.
Vs.
State of West Bengal & Ors.**

**Mr. Abhrajit Mitra,
Mr. Soumabho Ghose,
Mr. S. K. Singhi,
Ms. Riti Basu,
Ms. Piyali Pan.**

... for the petitioner.

**Mr. Chandi Charan De,
Mr. Soumitra Bandyopadhyay,
Mr. Anirban Sarkar.**

... for the State.

**Mr. Partha Pratim Roy,
Mr. Anirban Das.**

**... for the respondent nos.
8, 13 and 14.**

**Mr. Amitava Dasgupta,
Ms. Debleena Dasgupta,
Mr. Somnath Gangopadhyay.**

**... for the respondent nos.
9,10, 11 and 12.**

The vendor of the present writ petitioner initiated a proceeding before the Block Land & Land Reforms Officer for mutation of his name in the Record of Rights on the strength of dint of purchase from the recorded tenant of the property in question.

During the pendency of such application there has been a divestation of right, title and interest in favour of the writ petitioner, who continued with the aforesaid proceeding. The Block Land & Land Reforms Officer rejected the said application solely on the ground that the vendor of the writ petitioner purchased the property from one Sukur Jan Bibi, who is not a recorded tenant, and the rival claims have been made by the private respondents over the title on the strength of their respective deeds which would evince that it was executed by the heirs of the recorded tenant.

Solely on the basis of the aforesaid recording the

application was rejected. The said order was carried before the Appellate Authority, who simply dismissed the said appeal holding that the copy of the modified Khatian No. 192 where R. S. Plot No. 1042 having an area of 1.22 acres as recorded appears to be completely different from the Khatian No. 33 and, therefore, an attempt was made by the appellant therein to mislead the Appellate Authority by producing forged documents. The matter was thereafter carried before the West Bengal Land Reforms and Tenancy Tribunal and by the impugned order the same is disposed of.

Interestingly the said tribunal application appears to have been dismissed on twin grounds; firstly, the proceeding cannot be proceeded with having initiated by the vendor, at the behest of the subsequent purchaser, as the divestation of right, title and interest has not been done during the pendency of the tribunal application, in other words, it is held by the Tribunal that in order to proceed with the tribunal application there must be a transfer pendente lite and not when the transfer is effected before the initiation thereof; secondly, the entry made in the Record of Rights has a presumptive value on possession only and not on the title and, therefore, when rival claims are made, the original authority, i.e. the Block Land & Land Reforms Officer, has not committed any error in dismissing the said application.

In course of the instant writ petition, we directed the State to submit the report, which, in fact, has been done.

Taking inspiration from the said report an argument is sought to be advanced on behalf of the petitioner that if the same is true and correct copy of the Record of Rights, the authority has to act on the basis thereof and, therefore, the proceeding should be decided de novo. However, the learned Counsel

appearing for the private respondents claiming rival title has raised several issues including the issue relating to the ingenuine documents pertaining to the Record of Rights and the dispute has been contended to be of civil nature.

As indicated hereinabove, the Block Land & Land Reforms Officer simply dismissed the said application taken out by the vendor of the writ petitioner, as the rival claims have been made by the respective parties.

There is no reason assigned in the said order by the Block Land & Land Reforms Officer whether the claims so made by the parties before it have any relevance to the issues raised in the said application. Simply because “the rival contentions have been made” does not invite the dismissal of an application without recording any reasons whether such claim has any bearing on the core issues involved therein. Furthermore the Appellate Authority proceeded to dismiss the instant appeal solely on the ground that the documents produced by the writ petitioner does not appear to be genuine.

The stand has been disclosed in the report submitted before us, wherefrom it appears that there is a prevarication of the stand taken before the Appellate Authority and, therefore, we do not think that the same can be the sole ground for rejecting an application without recording any independent findings on the issues raised before it.

Curiously enough the Tribunal has not only dismissed the application filed by the writ petitioner on the ground of locus to maintain it, but on the premise that the entry made in the Record of Rights is not the conclusive proof of title. So far as the first point is concerned, we are amazed that whether that can be the ground for rejecting an application filed by the subsequent purchaser of the property in question. The

moment the right, title and interest has been divested by a valid document, the subsequent purchaser stepped into the shoe of his vendor and acquired such right accrued to its vendor in respect of the said property including the right to continue with the proceeding.

The Tribunal has misread the provisions contained under Order XXII Rule 10 of the Code of Civil Procedure, as it has its applicability to a transfer pendente lite and ignored the principles applicable in this regard and the fact that a person, who has derived right, title and interest from his vendor, has a right to continue with a proceeding or may initiate a proceeding in relation to the property. There is no finding whether there is a complex question of title in the proceeding requiring another forum to adjudicate upon. Simply because the rival claims on titles have been raised does not ipso facto invite the dismissal of the said application without recording any reasons at least prima facie on such claim touching upon the respective titles of the parties.

To sum up we find that all the authorities including the Tribunal have proceeded to dismiss the proceeding in a slipshod manner and the core issues requiring adjudication have been avoided.

We, therefore, set aside the order of the Tribunal; as a consequence thereof, the order of the Appellate Authority as well as the Block Land & Land Reforms Officer are also set aside.

The matter is relegated to the concerned Block Land & Land Reforms Officer to consider the applications afresh after affording an opportunity of hearing to all the respective parties having interest in respect of the property in question and upon giving liberty to disclose all the relevant documents pertaining to the issues involved therein and dispose of the same

within four months from the date of the communication of this order by recording proper reasons in accordance with law.

Nothing observed hereinabove, accidentally or incidentally, touching upon the merits of the respective claims shall have any persuasive effect upon the said authority, who is entrusted to decide the same independently as permissible in law.

With the above observations the writ petition is disposed of.

There will be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)