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16.03.2022
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WPA No.3664 of 2022

Sri Boomkes Dey and another
Vs.
The State of West Bengal and others

Mr. Probal Kr. Mukherjee,
Mr. Nilanjan Bhattacharjee,
Mr. Arpan Guha

.... for the petitioners

Mr. Raja Saha,
Mr. S.P. Lahiri

.... for the State

Mr. Samiran Mondal,
Mr. Abhinaba Dan

.... for the respondent no.2-
Bankura Municipality

The learned Senior Advocate appearing for the petitioners contends that there were several discrepancies and contradictions inherent in the order of the appellate authority passed under the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 (hereinafter referred to as “the 1962 Act”).

It is argued that the Collector, that is, the forum of first instance, had itself noted that apart from Plot No.6137, which is one of the subject plots of the proceeding for eviction initiated against the petitioners, was acquired by the State, as mentioned in the relevant Notification, but the rest of the subject

properties (that is, Plot nos.6131, 6132 and 6139) were acquired “partly” as mentioned in the said Notification. Therefore, it is argued, without specifying the exact parts which were acquired and whether those plots were demarcated, the Collector as well as the appellate authority acted patently without jurisdiction in remanding the matter back to the Collector to the stage of issuance of a fresh notice under Section 3 of the Act and passing an order of eviction against the petitioners respectively.

It is further submitted that, despite production by the petitioners of title deeds in their favour in respect of the suit property, of the years 1974 and 1983 respectively, the appellate court as well as the Collector committed patent perversity in holding that no title deeds were produced and that the petitioners did not have title in respect of the other plots apart from 6137.

It is pointed out, by referring to the relevant portions of the Collector's order, that the eviction order passed by the Collector was not corroborated by the findings preceding the same.

As far as the appellate authority is concerned, the said authority sent the matter back by directing the Collector to start the process of eviction *de novo* under the 1962

Act. However, preceding such operative portion of the order, the appellate authority had made six categorical observations in respect of the apparent lack of title of the petitioners and regarding other factual questions involved in the proceeding.

It is submitted that the appellate authority had held, without any material basis, that the acquisition of the landed property-in-question had been duly done for public purpose vide LA Case No.9/1984-1985 and that the then recorded owners had received the compensation for the acquisition. However, as *prima facie* evident from the deeds produced by the petitioners before the Collector, at that juncture the petitioners were the owners of the property by dint of purchase and, in the absence of any notice to the petitioners, the acquisition process could not have been completed.

It was further observed by the appellate court that the onus of proper recording of landed property in the records of rights lies on the owners and that the non-recording of names of the petitioners in the records of rights (ROR) prevails over the documents produced by the petitioners in the court below as regards their titles.

The appellate authority further went on to hold that no challenge against the acquisition and/or

requisition process was preferred by the petitioners and that the petitioners had failed to prove by any document that they had filed a title suit, which was pleaded by them.

The appellate court further observed, by overlooking the title deeds produced by the petitioners, that the claim of the appellants, that is, the present petitioners, of paying rent for the suit property did not confer upon them conclusive ownership of the suit property.

Learned counsel appearing for the State submits that in view of the appellate authority having directed a *de novo* issuance of notice and specifically observed that the Collector has to satisfy the ingredients of Section 3 of the 1962 Act afresh, there cannot arise any question of the petitioners being prejudiced in any manner by the preceding observations of the appellate authority and/or the findings of the Collector.

It is submitted that in the event the said findings are set aside, similar confusion regarding the actual acquisition of the relevant portions may very well arise in the fresh proceedings under Section 3 of the Act.

Learned counsel appearing for the Municipality submits that the Municipality, upon demarcation of

the plots-in-question, has already constructed a public road over a substantial portion of the same.

Upon hearing learned counsel, it is evident that the appellate court exceeded its jurisdiction in arriving at several findings on merits in respect of the rights and title of the petitioners vis-à-vis the suit plots, despite having held later that the matter was to be sent back to the Collector for *de novo* issuance of notice under Section 2(1) of the 1962 Act.

After having observed specifically that the essential elements of Section 3 of the Act were not adhered to, namely that the opinion of the Collector that the public land is under unauthorised occupation, issuance of show-cause notice to the encroacher-individual as to why order under Section 4(1) of the Act shall not be made, allowing time not less than fifteen days to respond and service of notice in the prescribed manner, it did not lie in the mouth of the appellate authority to arrive at specific findings on merits of the case against the petitioners.

That apart, the learned Senior Advocate appearing for the petitioners is justified in contending that the appellate authority acted in a perverse manner in arriving at several findings in its order, contrary to the evidence on record.

For example, despite the petitioners having produced their title deeds, which create a *prima facie* presumption of title, those were overlooked in favour of the alleged non-recording of the petitioners' names in the records of rights, which do not confer title under any provision of law.

Moreover, since the Collector specifically found that only a portion of the suit plots other than 6137 had been acquired, the entire acquisition proceeding comes under cloud in the sense that the specific portions, which were acquired, were not established before either of the forums.

In any event, even non-production of papers regarding the title suit filed by the petitioners cannot vitiate the petitioners' title, if otherwise presumable from the title deeds of the petitioners.

As such, the appellate authority left an inherent contradiction in its own order in arriving at several conclusions on merits in respect of the right, title and interest of the petitioners vis-à-vis the plots-in-question on the one hand and, on the other, directing a *de novo* issuance of notice from the stage of Section 2(1) of the 1962 Act.

In such view of the matter, WPA No.3664 of 2022 is disposed of by specifically observing that the findings on merits arrived at by the appellate

authority and/or the Collector in the proceedings against which the present writ petition has been preferred, shall not bind either of the parties at any subsequent point of time. All questions pertaining to the right, title and interest of the petitioners as well as the valid acquisition of the property-in-question shall remain open to be argued at subsequent stages of the consequential proceedings which may be initiated upon the issuance of a fresh notice under Section 2 of the 1962 Act.

It is, however, further clarified that this court has not entered into the merits of the respective claims of the parties in respect of the acquisition and/or the right, title and interest of the parties respectively in the plots-in-question.

Since affidavits have not been called for, the allegations made in the writ petition are deemed to stand denied by the respondents.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)