

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

MAT 273 of 2022

with

IA NO.: CAN 1 of 2022

(Through Video Conference)

Reserved on : 10.08.2022

Pronounced on: 19.09.2022

Md. Jarif Ali

...Appellant

-Vs-

The State of West Bengal & Ors.

...Respondents

Present:-

Mr. Saptangsu Basu,
Mr. Rafiqul Islam,
Ms. Manika Sarkar, Advocates

.... for the Appellant

Mr. Subhabrata Datta,
Mr. Sanatan Panja,
Mr. Abdus Salam, Advocates

..... for the State

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Rajarshi Bharadwaj, J:

1. This appeal is at the instance of the Writ petitioner challenging the order of the Learned Single Judge dated 24.02.2022, whereby W.P.A. No. 1725 of 2022 (Md. Jarif Ali-Vs-The State of West Bengal & Ors.) has been disposed of with cost.
2. The facts in a nutshell are that the appellant/ writ petitioner is the secretary of a society namely Paharpur Bamungram Fisherman Co-operative Society. On 5th January, 1983 a lease agreement was executed in favor of the said Co-operative Society in its former name Paharpur Fish Product and group by the Governor of West Bengal for a period of ten years. Subsequent lease agreements were made on expiry of the former agreements. The last agreement was renewed by the Additional District Magistrate, being the respondent No.3 on 10th August, 2015 mentioning the lease period for three years starting from 1422 B.S to 1424 B.S.
3. In 2015 after the payment of rent, the appellant was informed that the BLRO, being the respondent No.6 issued pathas in respect of the said Jalkars vide R.S Dag No. 355, 355/490 of Mouza-Purba Krishnapur, J.L No. 150 in the name of a stranger violating the provisions of law. Owing to this, the appellant moved before the Learned Tribunal with an application being O.A No. 2175 of 2012 (LRTT). The Learned Tribunal by an order dated 01.10.2013, directed the respondent No.3 to treat the application as representation and dispose of the same in accordance to law. Furthermore, another application vide O.A No. 418 of 2012 was also disposed of by the Learned Tribunal with a request to the respondent No.3 to direct the respondent No.6 to initiate a proposal for annulment of patta of the Jalkar. However the respondent No.3 and the respondent No. 6 did not comply with any of the said orders passed by the Learned Tribunal.
4. Amidst the pendency of such orders, the respondent No. 3 issued tender notice being memo no. DLRO/Jalkar/1571 dated 12.08.2018 inviting tenders applications from the intending associates for fresh lease throughout the

District of Malda including the Jalkar of the appellant despite any laches or negligence on their part.

5. Owing to such situation, the appellant moved to the Hon'ble High Court with a writ petition vide W.P. No 12481 (W) of 2018 challenging the said tender. An interim order for stay of operation was passed against the notice inviting tender. The said interim order was extended from time to time, however, on 05.03.2020 the writ petition was dismissed due to absence of the learned counsel for the appellant. An application being CAN No. 2985 of 2020 was filed for recalling and the learned counsel for the appellant intimated the same to the respondent No.3.

6. In the course of the pendency of the recalling application, one Md. Iskander Selim owner of a part of the waterbody land of Mouza Purbakrishnapur, J.L No. 150 C.S. Khatian No.1 L.R. Khatian No.541, CS. Dag no. 355/542, R.S. and L.R. Khatian No. 184/1, L.R. Dag No. 355/543, area of land 96 decimal and 97 decimal executed a power of attorney in favor of one Rashidul Haque Chowdhury and one Fazlur Haque Chowdhury dated 05.02.2018 who, in turn, executed a lease settlement of the said land in favor of the appellant dated 14.01.2022 for a period of ten years. After the lease agreement was executed, the appellant on 24.01.2022 lodged a written complaint before the I.C. Kaliachak Police Station being the respondent No.7 praying for protection as some miscreants forcefully stopped the appellant from catching fish in the leased waterbody and the Jalkar. The appellant also apprehended looting of fish owing to which the society would suffer heavy loss. However, no action was taken by the respondent No. 7.

7. On 27.01.2022 the appellant discovered that the respondent No. 7 had hung a notice near the Jalkar disclosing that no person, without the permission of the administration and relevant document will be allowed to catch fishes. Following such notice, the appellant placed the relevant documents before respondent No.7, however, the permission to catch fish was not granted by respondent No.7.

8. Challenging the impugned notice the appellant moved a writ petition vide WAP No.1725 of 2022 before the Hon'ble High Court. However, on hearing the matter, the Learned Single Judge passed an order dated 24.02.2022 dismissing the writ petition with cost of Rs.11,000/-, observing that the writ petitioner had suppressed the material facts. Hence, being aggrieved by the order passed by the Learned Single Judge the appellant filed the said appeal.

9. Learned Senior Counsel appearing for the appellant submits:

- i. The appellant society has been enjoying the Jalkar since 1983 upon payment of rent as settled by the respondent No. 3 and the society never defaulted in payment of rent.
- ii. The appellant is the leasee of an area of 96 decimal and 97 decimal of Jalkar of R.S. and L.R. Dag No. 355/543, CS. Dag no. 355/542 of Mouza Purbakrishnapur, J.L No. 150 and the appellant is also the custodian of the Government Jalkar.
- iii. Despite discloser of relevant documents to the respondent No.7 in support of the appellants right, title interest and possession of the Jalkar, no permission was granted to the appellant by the respondent No.7.

10. The contentions of the respondent No.7 are:

- i. On 14.01.2022, the respondent No.7 visited the Paharpur village and saw that three groups of different villages were in riotous mood in order to catch fish from the water body. On asking for valid papers or lease agreement for fishing the groups failed to produce any kind of lease agreement from competent authority. From a local enquiry and examination, it was gathered that the Additional District Magistrate and District land and land Reforms Officer, Malda being the competent authority had granted leases for catching fish to Paharpur Bamongram FCS Ltd. for a period of three years from 2015 to 2018. However, the leases period had already expired and no person was authorized by the authorities to catch fish in the said waterbody since then.
- ii. In order to restore the law and order, the respondent No.7 issued a public notice by hanging a flex written in Bengali script informing the inhabitants that without taking permission from the administration and without relevant records, no person or group shall be allowed to catch fish in the said water body. Thus, it was in the interest of the public at large without causing any prejudice to anyone.

11. Having heard the learned counsel for parties and on perusal of records, this Court is of the view that the appellant enjoyed a Government Jalkar from 1983 to 2018 for which the last rent was paid on 28.06.2018. As by a Memo No. DLRO/Jalkar/1571 dated 12.08.2018, tender was invited for fresh lease, the appellant moved a writ petition before this High Court challenging the said tender notice but the writ petition was dismissed for default. Though a restoration application is still pending however the appellant could not produce any document on record indicating that the lease is formally extended beyond the year 2018. Thus, the appellant, cannot claim any right whatsoever on the Government Jalkar nor shall the Jalkar be used under any circumstances unless authorized by the government. However, in respect to the private waterbody in which the appellant has been restrained by the respondent No.7 to catch fish, in case the appellant can provide adequate evidence to the respondent No.7 as to the rightful possession of the private waterbody, the appellant shall be allowed to use the said waterbody for catching fish.

12. With the above observations the appeal is disposed of. All pending applications are also accordingly disposed of. Imposition of cost is also waived.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata

19.09.2022

PA(BS)