

16.11.2022
Court No. 19
Item No.05
CP/GB

WPA No. 4375 of 2022

Uttam Samanta
Vs.
The State of West Bengal & Ors.

Mr. Sukumar Ghosh
Ms. Moumita Ghosh

...for the State.

Sk. Md. Galib
Ms. Subhra Nag

...for the State.

The petitioner wants a reappreciation of the issues which have already been decided earlier in WP No. 19945(W) of 2019 and in FMA 696 of 2021.

The petitioner was enlisted as a beneficiary under the Pradhan Mantri Abas Yojana (R) and such scheme was to be implemented on Plot No. 1385 pertaining to Khatian No. 680, J.L. No. 300, in Mouza – Mihitikiri. The proportionate share in the said plot had been recorded in the name of the petitioner's father, namely, late Panchanan Samanta. On the basis of such entry and the deed of gift, the petitioner was granted the benefit of the scheme and the first instalment had been released. Thereafter, the Pradhan, Pulsita Gram Panchayat by a letter dated April 5, 2019 directed the petitioner not to start the construction. The letter of the pradhan reflected that upon demarcation of the aforementioned plot, it

transpired that the land was not recorded in the name of the petitioner and a proceeding was pending. One Nimai Maiti claimed a rival title in respect of the said plot. A further enquiry was made. In the finally published records of rights, the proportionate plot of land which was earlier recorded in the name of late Panchanan Samanta was found to be recorded in the name of Bharat Maity.

The finally published records of rights have neither been set aside nor corrected by the competent authority as yet.

The petitioner submits that proceedings are pending, and an application for correction of the records of rights is pending before the concerned Block Land & Land Reforms Officer.

Thus, it is clear that as of now the petitioner does not have any clear title to the property in question. Mutation does not create title. It may at best be used to corroborate the claim of the petitioner of his possession. The mutation has also not been decided as yet.

The Block Development Officer, who was the monitoring authority for implementation of the housing scheme, enquired into the matter and by an order dated August 13, 2019, directed the petitioner to choose a different piece of land for construction of his house under the PMAY (R) within four weeks from the date of

the order, failing which, the petitioner was directed to refund the first instalment.

It appears from the order dated August 13, 2019, which is at page 34 of the writ petition that several civil suits and proceedings are pending before the Land Reforms and Tenancy Tribunal between the predecessors-in-interest of the petitioner and the other claimants in respect of the said plot. It was found that the right, title and interest of the petitioner and/or his predecessors were clouded.

Thus, the Block Development Officer, Kolaghat Development Block was of the opinion that in view of such controversy with regard to the title of the petitioner and the pending litigations, it would be prudent to allow the petitioner to choose another land in respect of which he had a clear title, so that the benefit of the scheme could be given to the petitioner.

Intention of the authority, in the reading of this court, was not to deny the petitioner the benefit, but to prevent further controversy over title and possession of the property in question in respect of which proceedings were pending. The petitioner did not have a clear title in respect of the said plot.

According to the scheme, the beneficiary must have title over the plot and also should be in possession of the same. The order of the Block Development Officer, Kolaghat Development Block dated August 13, 2019,

was challenged before this court in WP No. 19945(W) of 2019. The writ petition was disposed of by a Coordinate Bench of this court by the following order:

“I am of the opinion that there is no infirmity in the order passed by the Block Development Officer. Admittedly, the petitioner is not the owner of the land in question where he made the construction. The Suit regarding ownership is pending consideration before the Civil Court. Until and unless the petitioner proves his ownership in respect of the land in question, the Block Development Officer is not entitled to release any money in his favour for making construction of the house under the scheme in the said plot of land.

The petitioner has been given liberty to choose another piece of land for construction. The petitioner will be entitled to act in terms of the order passed by the Block Development Officer.

The writ petition does not call for any interference and the same is accordingly dismissed.”

Such order was challenged before the Hon’ble Division Bench in FMA 696 of 2021. While upholding the order of the learned Coordinate Bench in WP No. 19945(W) of 2019, the Hon’ble Division Bench was pleased to hold as follows:

“We have heard learned counsel for the parties. We do not find any apparent infirmity in the order under appeal. From the material on record, it appears that the land in question is a disputed land and there are rival claims in respect thereof. Litigation is also pending in respect of the land. Hence, no interference is warranted with the order impugned.”

However, the petitioner submitted before the Hon’ble Division Bench that a subsequent

representation had been filed and the petitioner would be 'happy' if Their Lordship directed the Block Development Officer to dispose of the said representation. Accordingly, without going into the merits of the contents of the application dated March 10, 2021, the Hon'ble Division Bench held as follows:

"However, learned counsel for the appellant says that subsequent to the learned Judge passing the order under appeal, a representation has been made by the appellant to the Block Development Officer, Panskura-II, Kolaghat, Purba Medinipur (page 37 of the stay petition) and the appellant would be happy if such representation is decided at an early date. Learned advocate for the State has no objection to such suggestion.

Accordingly, we direct the respondent no.3, who, we are told, functions as the Block Development Officer, to consider the appellant's representation dated March 10, 2021, in accordance with law and take a reasoned decision thereon within a period of eight weeks from the date of receipt of a copy of this order after giving an opportunity of hearing to the appellant and other interested parties. The decision so taken shall be communicated to the appellant within a week from the date of the decision.

We have not gone into the merits of the case. The respondent no.3 shall take an independent decision in accordance with law uninfluenced by his earlier decision."

The Hon'ble Division Bench made it clear that merits of the case had not been considered and the Block Development Officer must decide the issues independently. On the basis of such direction, the order impugned before this court dated January 27, 2022 being Annexure P-11 at page 63 of the writ petition was passed.

The submission of the petitioner is that the order did not reflect the reasons for rejection of the claim of the petitioner. It is contended that the petitioner's father had gifted the property to the petitioner and hence, as the donee, the petitioner had exclusive title and possession over the said land in question. It is further submitted that the mutation case is a pending before the Block Land and Land Reforms Officer as per the direction of the Land Reforms and Tenancy Tribunal. As such, the question of refunding the amount, did not arise.

The representation dated March 10, 2021, which the Hon'ble Division Bench had directed to be considered by the Block Development Officer is a prayer for release of the subsequent instalments. The petitioner stated in the said representation that Rs.1,20,000/- had been sanctioned, Rs.40,000/- had been released and the remaining amount should be released on the basis of the enlistment of the petitioner as a beneficiary. Although, it was represented before the Hon'ble Division Bench that a fresh representation had been filed by the petitioner and the same should be considered by the Block Development Officer, it appears from the records that a similar representation was made on April 12, 2019 before the Block Development Officer. The representation dated March 10, 2021 is a verbatim representation of the letter dated April 12, 2019. The petitioner did not

introduce any new facts nor could he clear the cloud over his title by filing the subsequent representation. The Hon'ble Division Bench on the prayer of the petitioner without going into the merits directed the Block Development Officer to consider the issue. The Block Development Officer did not find any new facts which were required to be decided or considered. The situation remained the same as it was, when the earlier representation had been dismissed.

The report of the Block Development Officer filed before this Court clearly indicates the reasons as to why the petitioner was asked to refund the first instalment. The scheme permits such claim for refund. The Block Development Officer is the authority empowered to monitor and implement the scheme. The instalment was released sometime in 2018. The same relates to the financial year 2018-19. As such, the petitioner was asked to refund the money in order to keep the accounts clear.

The learned coordinate Bench and the Hon'ble Division Bench did not find any illegality in the previous decision of the Block Development Officer claiming refund of the money or in the alternative, asking the petitioner to choose a different plot in respect of which he had a clear title so that he could get the benefit of the scheme.

The Hon'ble Division Bench specifically recorded that there were rival claim and there were civil suits pending.

Unless the beneficiary could show documents with regard to his title and possession, the scheme could not have been implemented.

The order impugned clearly indicates the reason why the petitioner could not be allowed to construct on the said plot. The order impugned also states that the scheme provided for refund of the money where disputes with regard to title were subsequently brought to the notice of the authority.

The petitioner must comply with the direction of the Block Development Officer as public money which had been released on a misconception, in favour of the petitioner, must be returned. The said amount relates to the financial year 2018-19.

It is made clear that in the event the petitioner can show a clear title in respect of any other plot or is ultimately successful in proving his title in respect of the concerned plot, the petitioner may apply for grant of such benefit under Awas Plus for fresh inclusion as already directed by the authority in the order impugned, subject to the petitioner fulfilling other eligibility criteria and the cut-off date for such inclusion had not expired.

Accordingly, the writ petition is disposed of. However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)