

Court No. 22
15.7.2022
(Item No. 1)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 4577 of 2018

Manoranjan Tripathi
VS
The State of West Bengal & Ors.

Mr. Tapas Kumar Sinha
Mr. Subir Sabud
..... for petitioner

Mr. Jahar Dutta
Mr. Somraj Dhar
..... for the State
Mr. Uttam Kumar Bhattacharya
.... For respondent Nos. 8 & 9

Mr. Uttam Kumar Bhattacharyya, learned counsel appearing for the Panchayat authority and the relevant Zilla Parisad files the affidavit-in-opposition in Court today, the same is taken on record. The affidavit-in-reply to the said affidavit is already on record.

This writ petition has been filed challenging a rehearing notice issued by the 4th respondent dated March 16, 2018 and another impugned rehearing notice dated March 27, 2018 by which the 4th respondent decided to rehear an issue which had attained finality by an order dated May 30, 2017 (at page 31 of the writ petition).

The writ petitioner claims to be the owner of a parcel of land being **Plot No. 640, Mouza-Purusottampur, J.L. No. 331**, Police Station - Panskura, District Purba Medinipur measuring

about 05.½ (five and half) decimals (for short, the said land) out of 11 decimals and on the said land the petitioner constructed a pucca building. By virtue of a registered deed of conveyance of 1980 the petitioner claims to become the owner of the said land. The change of user took place to bastu land at the instance of the petitioner and only thereafter he could construct the said building. The said **Plot being No. 650/1771** was ultimately converted into **L.R. Plot No. 640**. In support of such contention the petitioner relied upon **Annexure P-1 to the writ petition**.

In or about 2016 the Purusottampur Gram Panchayat (for short, the Gram Panchayat) started construction of a concrete road on a portion of he said land of the petitioner under one MGNREGA scheme under the 4th respondent without any acquisition or requisition whatsoever. The petitioner made representations contemporaneously. Following such representations a hearing notice was issued by the 4th respondent and the hearing was fixed on May 30, 2017, the petitioner attended the hearing. On May 30, 2017 on perusal of all the relevant documents and records produced by the petitioner and upon considering the submissions made by the petitioner and the Pradhan of the said Gram

Panchayat, the 4th respondent passed an order directing the Panchayat to remove the said concrete road which was constructed on a portion of the petitioner's land, ***Annexure P-3 to the writ petition.***

Despite said order being passed dated May 30, 2017 and repeated representations made by the petitioner from time to time no step was taken by the relevant State authority in compliance thereto, for removing the said concrete road.

The petitioner submitted an application dated July 24, 2017 to the 4th respondent for taking necessary action in the matter, since the said direction was not complied. In terms of such application, the 4th respondent relegated the matter to the relevant District Nodal Officer, MGNREGA, Purba Medinipur for taking steps in the matter. The said District Nodal Officer then directed the relevant Programme Officer, MGNREGA and the Block Development Officer (for short, BDO), Panskura - I to take necessary action to comply the said direction dated May 30, 2017 passed by the 4th respondent and to submit the necessary compliance report within seven days. The concerned BDO on January 24, 2018 directed the Pradhan of the said Gram Panchayat to comply with the direction of the 4th respondent

dated May 30, 2017. The petitioner states that, even then no compliance was made till date. By a written communication dated February 7, 2018 the Pradhan of the Gram Panchayat requested the relevant Nodal Officer for conducting a re-hearing on the issue, on which the said direction dated May 30, 2017 was made.

Ultimately the first re-hearing notice dated March 16, 2018, ***Annexure P-8 to the writ petition*** was served upon the petitioner. The petitioner being unable to attend the hearing, the second rehearing notice dated March 27, 2018, ***Annexure P-10 to the writ petition*** was served upon the petitioner. Against the first hearing notice the petitioner submitted his written objection dated March 21, 2018, ***Annexure P-9 to the writ petition.***

The petitioner being aggrieved with the said re-hearing notices, mentioned above, filed this writ petition.

The respondent No. 8 filed its affidavit-in-opposition. The respondent No. 3 also filed its affidavit-in-opposition. The writ petitioner also filed the respective affidavits-in-reply thereto.

Mr. Tapas Kumar Sinha, learned counsel appearing for the writ petitioner submitted that the Additional District Magistrate Programme

Coordinator, MGNREGA and Additional District Magistrate (GENL), Purba Medinipur, had no authority or jurisdiction to issue the said re-hearing notices on a closed issue which was concluded and decided on May 30, 2017 by the 4th respondent. Referring to **Annexure R-1 to the affidavit-in-opposition** filed by the 8th respondent, learned counsel submitted that, during pendency of this writ petition the record was manipulated by the relevant State authority **by changing the name of Rayat from the name of the petitioner to the Government of West Bengal, D-Board, Medinipur** against Khatian No. 739 and the Plot No. 640.

Learned counsel submitted that this was a clear *mala fide* practiced by the State authority just to frustrate and negate the said decision of the 4th respondent dated May 30, 2017. From a close scrutiny of the land records and the revenue records, it would be evident that the said land at all material time belonged to and owned by the petitioner on which the concrete road was constructed. The said decision dated May 30, 2017 was passed rightly, legally and inconsonance with the existing land records. Referring to the averments made in the affidavit-in-reply, the learned counsel submitted that the

writ petitioner had challenged the said manipulated land records in this petition also.

Mr. Sinha, learned counsel for the petitioner further submitted that, the land record was prepared and manipulated which was as disclosed by the 8th respondent through its affidavit-in-opposition, were done without granting any opportunity of hearing to the petitioner and without any notice to him. The learned counsel submitted that, this was an act on the part of the State authority of without jurisdiction and in breach of natural justice. As such, this writ court before which the such manipulated and illegal records were brought, had jurisdiction to take cognizance of the same and to set aside them. In support, the learned counsel relied upon three judgments of the Hon'ble Supreme Court, as follows:

- (i) In the matter of - Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors reported at (1998) 8 Supreme Court Cases 1;**
- (ii) In the matter of - Harbanslal Sahnia & Another Vs. Indian Oil Corpn. Ltd. & Ors. reported at (2003) 2 Supreme Court Cases 107 and**
- (iii) In the matter of - Balkrishna Ram Vs. Union of India & Anr.**

reported at (2020) 2 Supreme Court Cases 442.

He submitted that the said decision dated May 30, 2017 was never challenged by the State authority and as such it binds them.

Therefore the writ petition should be allowed.

Mr. Uttam Kumar Bhattacharyya, learned counsel appearing for the 8th respondent referring to page 31 of the writ petition submitted that the decision dated May 30, 2017 was taken only on the basis of Mouza map. Mouza map would never show whether the land belongs to Government or a private land. He submitted that, the said order dated May 30, 2017 was a result of non-application of mind on the part of the 4th respondent as the relevant land records were not considered at all. The specific stand of the 8th respondent, as he referred to, would appear from paragraphs 6 and 11 of the affidavit-in-opposition, which are set out herein below:

“6. with regard to the allegations made in paragraph 3 of the said writ petition, I strongly deny and dispute all the allegations made therein save what are matter of records and tenable in law. I strongly deny that the petitioner is duly recorded owner of plot No.

640 in L.R. ROR. It is stated that the plots of land contained in the Khatian recording Touzi No. 24B-2 is treated as Government land.

11. With regard to the allegations made in paragraph 8 of the sad writ petition, I strongly deny and dispute all the allegations made therein save what are matter of records and tenable in law. I strongly deny that inspite of knowledge and thereafter receiving of the order, the Pradhan, Purusottampur Gram Panchayat did not care of such as alleged. It is stated that after the knowledge of the said impugned order dated 30.5.2017 the said Gram Pradhan with the available records of ownership of land met the Ld. District Magistrate, Purba Medinipur and requested him to reconsider the matter after cancelling the impugned order dated 30.5.2017 and on perusal of the available records relating to the said disputed land, the Ld. District Magistrate, Purba Medinipur was pleased to interfere into the matter for reconsideration.”

Referring to Annexure R-2 to his client's affidavit he submitted that, the Gram Panchayat had decided to construct this road way back in

2014-2015 and accordingly the same was constructed. The road was never constructed overnight. The petitioner had ample time to challenge the said construction contemporaneously, which he did not do. The road had been made for general public for ingress and egress of the BSNL office. In any event, the land on which the road was constructed was not the land of the petitioner in any manner.

Mr. Jahar Dutta, learned State counsel submitted that, before the said concrete road was constructed a kachha road was also in existence, which had been regularly used by the public at large. He further submitted that, this writ petition is wholly premature. By issuing the said rehearing notice the petitioner was granted due opportunity of hearing so there is no reason to interfere with the same by the Writ Court.

Save as above, Mr. Dutta had adopted the entire submission made by Mr. Bhattacharyya, learned counsel appearing for the Panchayat and Zilla Parishad.

After hearing the learned counsel appearing for the parties and on perusal of records, it appears to this Court, that the subsequent land records which according to the petitioner were result of manipulation to frustrate

the said order dated May 30, 2017, to hold any adjudication thereupon several factual aspects are required to be gone into including scrutiny of the relevant land records and evidence. In as much as, an alternative, efficacious and speedy statutory remedy for such adjudication has duly been provided, for correction of land records, under the provisions of the West Bengal Land Reforms Act, 1955. This Court, in as much as, finds that the said subsequent land records are also not under challenge in this writ petition in any manner.

This Court in exercising its high prerogative writ jurisdiction, though the power is plenary, but must be guided with the self-imposed restraint by not encroaching the other statutory domain, where the forum for challenge is open. In as much as, this Court was not take into account all those factual aspects and disputed questions of facts. The judgments relied upon on behalf of the petitioner as referred above are well settled proposition of law that when a Writ Court can intervene, even if there is existence of an alternative remedy. This is not such a case. More so, there is no challenge to that effect in the writ petition.

The re-hearing notice issued which is impugned in this writ petition had duly granted an opportunity of hearing to the petitioner and as such it cannot be said that there was any violation of natural justice.

It is also not a case that the rehearing notices were issued without jurisdiction. Pursuant to the said notice the hearing shall be held by the third respondent in the writ petition. Even after the hearing takes place and a reasoned decision comes and the petitioner still being aggrieved thereby seeks to challenge the same including correction of land record, the remedy is left open to the petitioner under the said ***West Bengal Land Reforms Act, 1955***. Merely a request to participate in a re-hearing for reconsideration of the issue on which the order dated May 30, 2017 was passed by the 4th respondent cannot be a ground to interfere by a Writ Court.

In view of the above, the third respondent in the writ petition shall conduct a hearing giving at least seven days prior hearing notice to the petitioner and all the concerned parties. In course of such hearing the petitioner and all other relevant parties will be at liberty to disclose whatever documents and records they wish to rely upon. Copies of such records should be

exchanged by and between the parties, so that the petitioner can get access of all such records immediately. The third respondent then will come to his logical conclusion after giving an opportunity of hearing to the petitioner and the concerned parties and shall pass his reasoned order on the issue.

The entire exercise as directed above, must be carried out by the third respondent within a period of eight weeks from the date of communication of this order and the third respondent then forthwith communicate his reasoned order to the petitioner and the other concerned parties within a further period of two weeks from the date of such reasoned order.

In the event, the petitioner feels aggrieved with the reasoned decision of the third respondent which will also cover the necessary finding on the basis of the existing land records, the petitioner will be at liberty to challenge the same including correction of the relevant land records before the appropriate jurisdictional forum under the **West Bengal Land Reforms Act, 1955**, strictly in accordance with law.

It is further made clear, that this Court has not gone into the merits of the claim of the petitioner on the piece of land neither has made

any observation on the existing land records. All points are kept open for the parties to urge before the third respondent and thereafter, if necessary, before the appropriate forum under the ***West Bengal Land Reforms Act, 1955***.

On the above terms, the writ petition being **W.P.A. 4577 of 2018** stands disposed of.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)