

02.05.22

WPLRT 26 of 2020

Ct. No. 04

**Akd
&
Nandi**

**Dinesh Agarwal
Vs.
The State of West Bengal & Ors.**

**Mr. Dinesh Agarwal
... petitioner-in-person.
Mr. Anirban Roy,
Mr. Soumitra Bandopadhyay,
Mr. Aniruddha Sen.
... for the State.**

The writ petition is directed against the judgement and order dated 26th February, 2020 passed by the West Bengal Land Reforms and Tenancy Tribunal in O.A. 1097 of 2018; whereby and whereunder an application assailing the order dated 28th April, 2017 passed by the Chief Secretary to the Government of West Bengal is dismissed on the ground that the entry made in the R.S. Record of Rights prepared after coming in force of the West Bengal Estate Acquisition Act, 1953 has a presumptive value of its correctness.

The case has a chequered history, as the petitioner has been subjected to several round of litigation before the Land Reforms and Tenancy Tribunal as well as this Court. The genesis of the litigation can be traced when the petitioner was granted lease on 2nd February, 1994 for a period of five years for extracting of limestone in respect of the concerned plot under the provisions of West Bengal Minor Minerals Rules, 1973.

Before the expiration of the period so provided an application for renewal of the said lease was filed by the writ petitioner which was subsequently rejected by the Commerce and Industries Department, but curiously enough the temporary work permit was also issued. Subsequently the said

temporary permit was cancelled by the said Department on 21st August, 2000 in view of the fact that non-forest activities shall not be permitted to be continued over the forest land without obtaining a specific clearance under the Forest (Conservation) Act, 1980.

A writ petition was filed before this Court being W.P. 17778 (W) of 2000, which was disposed of on 9th July, 2001 directing the Secretary, Commerce and Industries Department to treat the writ petition as representation and pass a reasoned order within a stipulated time. It was further indicated in the said order that if the occasion so arises the inspection should be conducted to ascertain the nature of the land, more particularly whether there is any existence of forest. Pursuant to the said direction the inspection was made and it was brought to the notice of the Inspecting Officer that the mining activities on the said land was being continued since 1942 and, therefore, such land was never construed or included within the Forest. The said officer also opined that the necessary corrections should be made in the Record of Rights by an appropriate authority.

Subsequently the petitioner prayed for a long-term lease, but in view of the said report the mining activities was permitted from time to time on temporary basis. Since the prayer for long-term lease was kept pending, a writ petition being W.P. 575 (W) of 2012 was taken out before this Court, which was disposed of directing the Commerce and Industries Department to take an ultimate decision on the prayer of the petitioner for grant of long-term lease in respect of the concerned plot.

Despite the said order the said prayer was not acceded to, which constrained the writ petitioner to file another writ petition being W.P. 10536 (W) of

2014, which was again disposed of directing the Joint Secretary, Commerce and Industries Department to communicate a reasoned order within a time frame. Ultimately the application for long-term lease was rejected on 9th July, 2014 solely on the ground that the petitioner has failed to submit the forest clearance under the Forest (Conservation) Act, 1980. The said order was assailed by the petitioner in W.P. 21357 (W) of 2014 before this Court, but in the midst of pendency of the said writ petition the petitioner made an application before the Tenancy Tribunal for correction of the classification of the plot from Pahar Jungle to Pahar.

The entry made in the C.S. Record of Rights would evince that it was classified as Pahar but the same was unilaterally changed at the time of preparation of R.S. Record of Rights to Pahar Jungle. The tribunal application was disposed of directing the Land Reforms Department to consider the said prayer after giving an opportunity of hearing to the petitioner as well as all interested parties.

Though the petitioner initially challenged the said order before this Court but subsequently withdrew the same. However, in compliance with the said directions the application for correction of Record of Rights was disposed of retaining the classification of the plot as Pahar Jungle. The reliance was placed upon Section 39 of the West Bengal Estate Acquisition Act, 1953 and the provisions of Forest (Conservation) Act, 1980. The said order was challenged before the Tribunal in O.A. 2500 of 2015, which was dismissed on 22nd November, 2016.

The order of the Tribunal was further challenged before this Court in WPLRT 123 of 2016, which was disposed of on 4th January, 2017 directing the

Secretary to the Government of West Bengal, Land Reforms Department to consider the said representation afresh. It is relevant to note that simultaneously the direction was also passed upon the Secretary, Commerce and Industries Department, Government of West Bengal, to jointly consider the said representation and in the event of disagreement, the matter may be forwarded to the Chief Secretary to the Government of West Bengal for a decision thereupon.

The writ petition, which was pending before this Court, was subsequently disposed of in the light of the same with clear stipulation that the determination has to be made whether the land in question falls within the forest area and if does, then the licence for mining should immediately be renewed or revalidated.

In the meantime the Principal Secretary, Land Reforms Department and the Secretary, Commerce and Industries Department disagreed in their decision and the matter was referred to the Chief Secretary. Ultimately vide order dated 28th April, 2017 the Chief Secretary to the Government of West Bengal agreed with the views of the Principal Secretary, Land and Land Reforms and Refugee Relief and Rehabilitation Department and Land Reforms Commissioner and held that the classification cannot be changed without following the due process of law.

The said order was further challenged in a writ petition being W.P. 4421 (W) of 2018 before this Court, which was again disposed of granting liberty to the petitioner to challenge the order of the Secretary to the Government of West Bengal before the Tribunal.

The Tribunal rejected the Original Application on

the ground that in the event of conflict between the entry made in C.S. Record of Rights and R. S. Record of Rights, the later would prevail and, therefore, the presumptive value of correctness in the entry is to be upheld.

Both the parties have extensively made argument and in course of hearing it transpires that the mining activities was being carried on since 1942. It is pertinent to record that the land in question was within the territorial limit of the State of Bihar and by virtue of Section 14 of the Bihar Private Forest Act, 1946 the notification was published inviting objections as to why the plots mentioned in the schedule thereto cannot be declared as private forest.

None of the parties have disputed that the disputed plot is within the schedule. Subsequently by virtue of the State Reorganization Act the District of Purulia has been included within the territorial limit of State of West Bengal in the year 1964 and it is not in dispute that it was subsequently treated to have been vested with the State of West Bengal. The West Bengal Estate Acquisition Act, 1953 was in operation and in view of the provisions contained therein and in absence of any option having exercised to retain the land, the same stood vested,

Since the property was treated to have been vested, the mining lease was issued in the year 1994 in favour of the writ petitioner and was continued from time to time, there is no document forthcoming from the end of either of the parties which may remotely throw a light on the fact that after the notification issued under Section 14 proposing to declare the land as private protected forest no final publication has been made.

It is thus apparent in absence of final

publication the notification under Section 30 of the Bihar Private Forest Act, 1946 does not ipso facto lead to final declaration of the land to be a forest. In this regard the reference can be made to three Bench decision of the Supreme Court rendered in case of *State of Bihar vs. K.S.R. Swami* reported in AIR 1966 SC 1847, wherein it is held:

“9. It is abundantly clear that the notification under the proviso is not intended to amount to a final constitution of the private forest as a private protected forest. The notification under the proviso is to be made only ‘pending the completion of the said enquiries, procedure and appeals’. Quite clearly, these enquiries, procedure and appeals are not stopped by the declaration under the proviso. They have to be completed and it is only after their completion that a notification can be made by the Government under the main part of the section. On a reasonable reading of the section it is therefore abundantly clear that even where the Government thinks fit to make a declaration under the proviso, this will have effect only so long as the period fixed under S. 16 for preferring claims (i) has not expired; (ii) claims under Ss. 16 and 22 have not been disposed of; (iii) the periods limited by S.27 for appealing from the orders passed in respect of those claims have not elapsed and (iv) all appeals preferred against such orders have not been disposed of.

12. This argument is in our opinion wholly unacceptable. Considered in the background of the provisions in the Act for claims to be made under S. 16, for enquiry into these by the Forest Officer and thereafter for appeals from the decision of the Forest Officer, after the completion of all of which only the final notification

constituting the private forest a private protected forest can be made, it is clear that rights 'other than landlords' rights' in respect of which no claim has been preferred under S.16 or which have not been disclosed by enquiry under S.17 were intended by the legislature to be extinguished only after the final notification is made. It is to be noticed that three months' time from the date of the proclamation under S.16 is to be allowed for making claims. The enquiry under S.17 can start only after these claims have been made and some more time must elapse before an enquiry can be completed into the existence of rights which have not been claimed under S. 16. A notification under the proviso of S. 30 can however be made at any time after the notification under S.14 has issued. It is meaningless to speak of rights in respect of which no claim has been preferred under S.16 and of the existence of which no knowledge has been acquired by an enquiry under S. 17, before the period for the enquiry under S.17 has expired. Again, there will be no extinction of rights, under S. 19, if the person claiming the rights satisfied the Forest Settlement Officer that he had sufficient cause for not preferring the claim within the period fixed under S. 16. The question of thus satisfying the Forest Settlement Officer can clearly not arise before the period fixed under S. 16 has expired. All this clearly shows that the extinction of rights under S.19 can take place only after the final notification under S.30 has been published."

The subject property appears to have been vested under Section 5 of the West Bengal Estate Acquisition Act, 1953 and the Record of Rights was

corrected after the area in which the subject property is situated is included in the territorial limit of the State of West Bengal; the R.S. Record of Rights was corrected which is apparently distinct and different from the entry made in the C.S. Record of Rights.

There is no document forthcoming nor has been disclosed in the impugned order passed by the concerned authority, the Chief Secretary to the Government of West Bengal, that the subject property is comprised within the forest, although the same was sought to be categorized as private forest under the Bihar Private Forest Act, 1946. As indicated above in the judgement of the Supreme Court, unless the final publication is made under Section 30 of the Bihar Private Forest Act, 1946, mere publication under Section 14 thereof does not ipso facto render the said land as forest or at best the private forest owned by the individual.

We do not find any document in support of the change in the entry having made in the R.S. Record of Rights; more particularly the documents which are required in this regard.

As indicated above, the order of the Chief Secretary to the Government of West Bengal cannot be sustained.

Section 44(2a) of the West Bengal Estate Acquisition Act postulates the revision of the entry made in the record finally published and, therefore, we do not find any impediment in taking a conscious decision in the light of the observations made hereinabove under the aforesaid provision.

The order of the Chief Secretary dated 28th April, 2017 is quashed and set aside.

The matter is relegated to the Chief Secretary to the Government of West Bengal to revisit and reconsider the said application and dispose of the

same after giving an opportunity of hearing to the writ petitioner as well as the interested persons within four months from the date of the communication of this order by recording proper reasons.

The writ petition is thus allowed.

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

(Harish Tandon, J.)

(Rabindranath Samanta, J.)