

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Prasenjit Biswas

WPLRT 36 of 2022

Bangali Md. and others

Vs.

The State of West Bengal and others.

For the Petitioner : Mr. Goutam Thakur,
Ms. Anandamayee Ghosh.

For the State : Mr. Sirsanya Bandyopadhyay,
Ms. Tapati Samanta.

For the Private Respondents : Mr. Suvro Prakash Lahiri,
Mr. Md, Habibur Rahman,
Mr. Rajesh Naskar.

Judgment on : 18th November 2022.

The Court.

A piquant situation has arisen in the instant case and the beleaguered petitioners approached this Court seeking temporary mandatory injunction against the private respondents alleging illegal and forcible dispossession in respect of the property settled by way of patta without due process of law.

The salient facts emanate from the pleadings of the parties are adumbrated as under:

By virtue of promulgation of the West Bengal Estate Acquisition Act, 1953, the Government claimed to have assumed the land to be vested and initiated a proceeding for settlement of the said land upon issuance of patta. Undeniably, the patta was issued in favour of the petitioners in the year 1976. According to the petitioners, after the settlement of land and upon issuance of patta in their favour, the possession was delivered and such possession remained uninterrupted till date when they were forcibly dispossessed from the said land.

The facts would further galore that when the proceeding was initiated against the private respondents, they approached the civil Court by filing a suit seeking declaration that the vesting is invalid and/or illegal and also the act of issuing patta is consequentially invalid. For the purpose of clarity, it is recorded that the petitioners being the patta holders were made party along with the State of West Bengal in the said suit. Subsequently, the said suit was decreed in favour of the private respondents and the judgment and decree was carried to a first appellate court. The first appellate court reversed the judgment and decree, as a result whereof the suit filed by the private respondents stood dismissed. The judgment and decree of the first appellate court is further assailed before this Court in a second appeal and it is undisputed that the second appeal was admitted under Order XLI Rule 11 of the Code of Civil Procedure and remain pending. However, there is a dissent over the pendency of the said second appeal as, according to the petitioners, the same was dismissed for default, but, according to the private respondents, the restoration application has been allowed and the second appeal is still pending in the docket of the Court.

Be that as it may, we do not think that such fact shall act as a deterrent in deciding the real cause involved in the instant writ petition.

Amidst the pendency of the second appeal, the private respondents made a complaint before the Sub-Divisional Officer that the patta so issued is in contravention to the provisions contained under Section 49(1) of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as 'said Act'). It was contended that the petitioners were holding the excess land to what has been contemplated under the aforesaid provisions and, therefore, the said patta should be annulled. The Sub-Divisional Officer after hearing the respective parties accepted the contention of the private respondents and annulled the patta. The order was challenged before the appellate court and we are given to understand that the appellate authority dismissed the said appeal. The order of the appellate authority is challenged before the Tribunal.

To make the record further straight, there was an interregnum proceeding at the instance of the private respondents before the authority for annulling the patta and ultimately reached the Tribunal where the order of remand was made to decide it afresh. The order impugned before the Tribunal is an resultant effect of the order of remand and for such reason, a point has been taken that the finding of the Sub-Divisional Officer to the effect that it is a fresh proceeding is not corroborative of the fact rather it runs contrary to the record. The facts, which are undisputed, are that the patta issued by the authority in favour of the petitioners has been annulled and the Tribunal is in seisin of the matter and no final decision has yet been taken. Equally, the suit seeking declaration that the order of vesting is bad has been dismissed and the second appeal is pending and,

therefore, the order of the first appellate court is still operative and binding to the parties.

A peculiar situation has arisen when the allegation is made by the petitioners that they have been dispossessed during the interregnum period between the order of the appellate authority and the filing of an application before the Tribunal.

Both the petitioners and the private respondents are very much vocal on the issue of possession. As indicated above, the petitioners all along contend that they were in possession in pursuance of the patta issued by the Government; on the other hand, the private respondents contend that even if the patta was issued, the possession was never taken by the State of West Bengal and they remained in possession throughout.

Such being the peculiarity of facts emerged from the respective pleadings and the stand of the parties, the question is what interim order the Tribunal ought to have passed in the said tribunal proceeding. Section 49(1) of the said Act postulates that the State Government may settle any land at its disposal without any premium being charged for it that the persons, who are the residents of the locality, where the land situated and who together with other members of the family own no land or less than 0.4047 hectares of land used for the purpose of agriculture. The proviso inserted to the aforesaid sub-section puts a further bridle on the State Government while settling the land at its disposal to which we are not concerned with at this juncture. Sub-section (2) of Section 49 bestowed power upon the Revenue Officer to initiate a proceeding either suo motu or an application made to him in that behalf after the settlement of the land and in case of subsequent transfer to annul the settlement or both the settlement and the transfer if upon enquiry it is found that the settlement of land was made by mistake or obtained under any

provisions of the Section by practice of fraud, misrepresentation, coercion or otherwise or the transfer is made in contravention to the provision of sub-section (1A) of the said Section. Sub-section (3) of Section 49 provides a mechanism relating to enforcement of the delivery of possession of the land by using such force as may be required after evicting a person in actual possession of such land if an order is made under sub-section (2) of Section 49 of the said Act. Sub-section (3A), which was introduced subsequently, to the said Section contemplates the mechanism and modalities relating to the enforcement to the delivery of possession of any land and evicting any person in actual possession by requesting the police administration to render adequate assistance in this regard. The other sections continued the remedies of a person, who has been evicted or to be evicted in exercise of such powers recognized in sub-section (2), sub-section (3) and sub-section (3A), which, in our opinion, is not relevant for the present purpose.

Upon harmonious reading of the provisions contained in Section 49 of the said Act it is manifest that the property at disposal of the Government may be settled in favour of a person or a family without charging any premium provided the contingencies indicated therein are satisfied. It further confers right upon the authority to enforce the delivery of possession and evict any person in possession thereof by using such force as may be necessary and approaching the appellate authority to render adequate assistance for due implementation of the said order.

The West Bengal Land Reforms Rules, 1965 framed in exercise of the Rule making power enshrined in the said Act contains the exhaustive provisions relating to the settlement of the land and enforcing the delivery of possession by evicting the person occupying

such land, which was at the disposal of the State Government before the patta was issued.

Both the petitioners and the private respondents are claiming to be in possession throughout, although the State is categorical that the proceeding for recovery of possession was initiated and, in fact, the possession was given to the petitioners, but in view of the inconsistent stand taken by the respective parties, we are not in a position at this nascent stage to arrive at the conclusive finding in this regard. The aforesaid observations are made taking into consideration the stand of the petitioners that the first appellate court while reversing the judgment and decree of the trial court categorically held that the petitioners are in possession of the settled land.

What emerged at this stage is that the attempt to thwart the order of vesting at the behest of the private respondents has failed as the first appellate court reversed the judgment and decree of the trial court, which held that the vesting is bad and the second appeal is still pending and so long the judgment and decree of the first appellate court is not reversed it remains binding on the parties.

We enquired from the learned Advocate appearing for the private respondents whether any interim order was passed in the said second appeal, which interdict the operation of the judgment and decree of the first appellate court. We are informed that there is no such interim order or the final order passed in the said appeal. We can safely proceed on the undisputed fact that the judgment and decree of the first appellate court has not been set aside and, therefore, does not loose its binding effect on mere filing of the second appeal or pending disposal of the second appeal. The logical inference, which can be deduced from the aforesaid fact, is that the order of vesting has not been interfered with and/or upset by a higher forum

after the suit filed by the private respondents was dismissed in terms of the judgment and decree passed by the first appellate court.

Precisely sensing the hurdle, further approach was made by the private respondents before the authority alleging that the issuance of patta was in violation of the provisions contained in Section 49(1) of the said Act. The moment such approach is made, there is a certainty of one fact i.e. the land stood vested to the State and was at their disposal and their action to issue patta was in contravention to the provisions contained under Section 49(1) of the said Act. If such stand has been taken by the private respondents, it is not open to them to contend that the order of vesting should not be given effect to as the settlement of land can only be made by the State Government in respect of a vested land otherwise the expression “at their disposal” would have no meaning.

The moment the land is treated as vested land and the patta so issued was subsequently annulled by the authority, it is a bounden duty of the State Government to resume possession of the land and should not have allowed to be in possession of any person. Section 49 has provided a full mechanism to take possession of the land at the disposal of the State Government and, therefore, it is an obligation of the State Government to see that its land is not dissipated nor squandered by any person having no authority to remain in possession thereof.

We are conscious of the proposition that the moment the patta is issued and the possession is delivered and if such possession is interfered with subsequent thereto at the behest of any individual not claiming under the State Government, such is a civil wrong and the remedy may be pursued in this regard. But after looking at the scheme of the provisions contained in Section 49 of the said Act, the moment the competent authority has taken a conscious decision that

the patta was in contravention to the statutory provisions, it ought to have resumed the land and should not allow such land to be occupied by the squatters.

The nuances of passing of temporary mandatory injunction, as highlighted by the learned Advocate appearing for the petitioners, cannot be doubted but the ratio of the judgment to be culled out from the facts of the case and if the case in hand stands to the effective parameters, such course can be adopted by the Court. We have not even a slightest doubt in our mind that no individual can be permitted to take the law in his/her own hand and use the force by evicting the person from settled possession. There is no fetter on the part of the Court to put the clock back and restore the status quo ante by passing a temporary mandatory injunction, but such course should be adopted in an exceptional and extraordinary case depending upon the facts of each case. It is of rare and rarest case the Court should exercise such power and remove/evict a person from possession, who obtained the same without taking recourse to law and put the person, who was in settled possession, even if there is no title in support thereof.

The possession is the ninth principles on title. The law respects possession even if there is no title in support thereof. No person can be evicted and/or ousted from the settled possession without recourse to law.

In the instant case, though it is claimed that the possession was forcibly taken by the private respondents but there appears to be a dispute and a cloud and it would not be proper at this stage to pass an order as prayed for by the petitioners. However, we feel that the moment the patta is annulled and the matter has traveled to the Tribunal and in the event the Tribunal interferes with the order of the authority, the position would have been different, but till now, there is

no existence of patta, as the same has been annulled subject to an outcome of the result in the tribunal application.

Such being the peculiar fact, we feel that the justice and equity demands that so long the order of vesting remain subsisting and not interfered with by the Court in the second appeal, the property in question would remain a property at the disposal of the State Government and, therefore, the State Government is directed to take immediate steps for resumption of the possession from the person, who claimed possession.

We expect that the entire exercise shall be completed within six weeks from the date of communication of this order.

With these observations, the writ petition is disposed of.

Nothing observed herein above shall be construed to have any persuasive effect on the merit of the respective cases before the Tribunal as well as this Court.

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

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(Harish Tandon,J.)

(Prasenjit Biswas, J.)