

24.
29-04-2022
debajyoti
(Ct. no.06)

MAT 625 of 2022
+
IA NO:CAN/1/2022

Abdul Halim
Vs.
State of West Bengal & Ors.

Mr. Kamalesh Bhattacharya,
Mr. Arindam Das,
Mr. Atanu Banerjee,
Ms. Rumeli Sarkar,
Mr. Aninda Bhattacharya
... For the Appellant.

Mr. Anirban Ray, learned G.P.,
Mr. Debasish Ghosh
... For the State.

Mr. Partha Sarathi Bhattacharyya, Sr. Adv.,
Mr. Sudip Sarkar,
Mr. Raju Bhattacharyya
... For Respondent Nos.
10 to 16.

By consent of the parties, the appeal and the application are taken up together for hearing.

It appears that initially, on November 22, 2018, the Department of Land & Land Reforms and Refugee Relief & Rehabilitation, Government of West Bengal, settled the relevant fishery in favour of a cooperative society of which the writ petitioner/appellant was the Secretary. The said settlement was for a period of three years commencing from 1425 B.S. to 1427 B.S. of Bengali calendar year, corresponding to English calendar dates April 15, 2018 to April 14, 2021. The said settlement was, however, cancelled in compliance of an order of this Court.

However, again on December 08, 2020, the Joint Secretary of the Department of Land & Land Reforms and Refugee Relief & Rehabilitation confirmed another settlement for three years commencing from 1426 B.S. to 1428 B.S. of Bengali calendar, (corresponding to the English dates April 15, 2019 to April 14, 2022) in favour of the petitioner/appellant.

The writ petitioner/appellant, after the said approval was accorded, approached the learned Single Judge with the following prayer:

“ Writ in the nature of Mandamus commanding the respondents to rescind and cancel the demand of lease rent for 1426 B.S. and for the period from 1st day of Baisak 1427 B.S. till 22nd day of Aghrayan 1427 B.S. i.e. from 14th April, 2019 to 08.12.2020 for twenty months during which no settlement of fishery or possession thereof was given to the petitioner and to modify the lease period of 3 years commencing from the date of delivery of possession of fishery as per approval date 08.12.2020 till 08.12.2023 corresponding to from 22nd Aghrain 1427 B.S. to 21st Agrain 1430 B.S. and to adjust the lease rent of Rs.3,77,274/- on 24.09.2018 in advance and to modify the order or approval under memo No.2517-GE (M/3M-78/18 dated 08.12.2020) being Annexure “P-15” of the petition passed by the respondent no.9. ”

Before the learned Single Judge, the petitioner submitted that though the lease granted in his favour is in force, he is not being allowed to carry on pisciculture because of disturbance from local miscreants. He prayed for police help before the learned Single Judge. It appears that the matter was heard on three occasions before the learned Single Judge but no such order was passed.

The petitioner has challenged one of such orders before this Court whereby the learned Single Judge passed no protective order in his favour.

It is the case of the State respondents before us that though the lease period commenced from 1426 B.S., the petitioner was, in effect, in possession from 1425 B.S. (April 15, 2018). Therefore, the deposit of lease rentals made by the writ petitioner/appellant in the region of Rs.12,00,000/- was treated to be for the period from 1425 B.S. to 1427 B.S. (April 15, 2019 to April 14, 2021). The lease rental for the period of April 15, 2021 to April 14, 2022 has not been paid by the writ petitioner. The lease granted in favour of the petitioner has expired on April 14, 2022. Therefore, the petitioner is not entitled to any protective order at this juncture.

Mr. Kamallesh Bhattacharya, learned advocate, appearing for the appellant, seriously disputes the contention advanced by the State. Referring to page 44 of the stay petition, Mr. Bhattacharya submits that even on January 08, 2021, a letter was issued by the Additional District Magistrate and District Land and Land Reforms Officer addressing the relevant officers to ensure that the petitioner could do the pisciculture smoothly and peacefully. Mr. Bhattacharya submits that the said letter clearly evidenced the fact that the petitioner was not given possession even on January 08, 2021.

It is the case of the appellant that date of commencement of the relevant lease period should be December 8, 2020, when the actual possession of the fishery was handed over to him. It is the further case of the appellant that the lease rental of Rs.3,77,274/-

paid by him on September 24, 2018 should be adjusted as advance lease rental for the said period commencing from December 8, 2020.

Before the learned Single Judge, no affidavit was filed by the respondents disputing the contention of the appellant. In our view, a plain reading of the writ petition as well as the annexures to the writ petition, *prima facie*, suggests that the settlement lease period should be treated to have commenced from December 08, 2020, when the approval of the lease was accorded and communicated by the State. Whether the petitioner was actually in possession of the fishery before that period should be decided by the learned Single Judge on exchange of affidavits. If the commencement of the lease is from December 8, 2020, the lease would expire on December 9, 2023. It is not disputed by any of the parties that the petitioner is in possession of the relevant fishery as on date.

In that view of the matter, we direct the Officer-in-Charge of the local police station and the State respondents to ensure that no obstruction is created by anyone in carrying out pisciculture business by the writ petitioner/appellant in the fishery allotted to him for a period of two months from date. The respondents shall be at liberty to file Affidavit-in-Opposition to the writ petition before the learned Single Judge within two weeks from date. Reply thereto, if any, be filed within one week thereafter. The parties will be at liberty to mention the matter before the learned Single Judge seeking any further order, including the extension of the interim protective order that we have passed today.

MAT 625 of 2022 and I.A. No. CAN 1 of 2022 are, accordingly, disposed of.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)