

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 9174 of 2015

Amitava Ghosh & Anr.

Versus

The State of West Bengal & Ors.

For the petitioners : Dr. Indrajit Mandal
Ms. Indrani Pal
.....Advocates

For the State : Mr. Lalit Mohan Mahata
Mr. Prasanta Behari Mahata
.....Advocates

Heard lastly on : 28.07.2022

Judgment on : 05.09.2022

Jay Sengupta, J.:

1. This is an application praying for a direction upon the respondent nos. 1 to 4 to cancel the Memo No. 182/2 dated 07.08.2014 and to comply with the

judgment and decree dated 25.09.2013 passed in Title Suit No. 73 of 2007 by the Learned Civil Judge (Senior Division), 5th Court, Alipore in respect of the scheduled land and an order to restrain the respondents from disturbing the peaceful possession and enjoyment of the scheduled land by the petitioners.

2. Dr. Indrajit Mandal, learned counsel, appearing on behalf of the petitioners, submitted as follows. On 22.05.1992, the petitioners purchased the scheduled case land being R.S. Plot No. 380/4427 of Mouza- Garfa, J.L. No. 19, Khatian No. 261 within Police Station Tollygunge now Garfa by a registered sale deed. The petitioners mutated their names in the records. They were paying municipal taxes regularly. The petitioners instituted Title Suit No. 73 of 2007 for declaration of title and permanent injunction against one Yubak Sangha, an un-registered club, four other persons and the State. The suit was decreed in their favour. The decree was put into execution and possession was made over in favour of the petitioners with police help. After execution of decree, some individuals were disturbing the petitioners' possession in the said land. This prompted the petitioners to file a writ petitioner being W.P. No. 37872 (W) of 2013 regarding police inaction. This Court directed the Officer-in-Charge concerned to ensure that the private respondents therein did not interfere with the petitioners' possession of the suit land. On 04.08.2014, the Director (Land) and State Public Information Officer informed the petitioner no. 2 that the land was

not acquired by the Department. By Memo No. LA 3863 dated 24.09.2014, the Additional Land Acquisition Officer informed the petitioner no. 1 that the case plot R.S. 380/4472 was not affected in any L.A. proceeding. However, the Director (Land), R.R. & R. Department issued notice dated 07.08.2014 to the petitioners that during spot enquiry, it was observed and reported by the inhabitants of Viveknagar Colony that the petitioners had made construction of a boundary wall by encroaching upon a portion of land in S.P. No. 424, C.S. Dag No. 283 (part) of Mouza- Garfa, J.L. No. 19 now Viveknagar Colony unauthorisedly. The petitioners were directed to appear before the concerned authority with relevant papers and were directed not to make further construction on the said plot without an office order. By a letter dated 18.08.2014, the petitioners denied and disputed the allegation of encroachment of Government land. Since the petitioners were covered by the decision of the Civil Court in Title Suit No. 73 of 2007, the respondents erred in issuing the impugned notice in restraining them from making a further construction.

3. Mr. Lalit Mohan Mahata, learned Additional Government Pleader, representing the State, submitted as follows. Admittedly, the two plots in question being the one in respect of which an order was passed by the learned Civil Judge and an order was passed by the Writ Court and the one which was referred to in the impugned letter dated 07.08.2014 were completely different.

While the learned Civil Court's order were passed in respect of R.S. Plot No. 380/4427 of Mouza- Garfa, the impugned letter dated 07.08.2014 was passed regarding encroachment in Survey Plot No. 424 corresponding to C.S. Dag No. 283 in Mouza Garfa under Viveknagar Colony. Therefore, the petitioners' claim in respect of their title and possession of another plot of land was of no relevance in challenging a notice for unauthorised encroachment in respect of another plot of land. In a sense, the present application was completely misconceived.

4. I heard the submissions of learned counsels appearing on behalf parties and perused the writ petition, the affidavit and the written note of submissions filed on behalf of the petitioners.

5. It appears that the plot of land in respect of which an order was passed by the learned Civil Court and, thereafter, an order was passed by this Court in its writ jurisdiction is quite distinct and different from the plot of land in respect of which an unauthorised construction has been alleged by the impugned letter.

6. Therefore, there is no merit in the contention of the petitioners that since the right of the possession of title in respect of another plot of land belonging to the petitioners was established, the petitioners need not respond to the impugned notice which alleged unauthorised construction by the petitioners.

7. In view of the above, I do not find any reason to interfere with the impugned notice.

8. Accordingly, the writ petition is dismissed.
9. However, there shall be no order as to costs.
10. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)

P. Adak