

5.8.2022
Sl.No.3
sn

W.P.A. No. 11758 of 2022

Pinki Roy & & Anr.

Versus

The State of West Bengal & Ors.

Mr. Debabrata Sardar

Mr. Mrinal Kanti Mistry

... for the Petitioners.

Md.Galib

Ms. Piyali Sengupta

...for the State-respondents.

Mr. P.P. Roy

Mr. Debdas Khanna ..for the added respdt.

Mr. Ambar Nath Banerjee ..for the respdt.5

The petitioner alleges police inaction and prays for a mandamus upon the police authorities to facilitate construction of a boundary wall.

The petitioner claims to be the descendents of Chandranath Roy Sanfui, and owners in possession of some landed property through inheritance and transfer. The said property pertains to premises no. 20, Ganesh Chandra Lane, 63, Sridha Roy Road some others. All such property are situated within the limits of Kolkata Municipal Corporation, Ward No. 66. The alleged plots were brought within the purview of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as the said Act) by a Gazette notification dated July 7, 1989. By the said notification, the vacant land of the predecessor of the petitioners which had vested had been

notified. As the said notification was issued without hearing the writ petitioners therein, the gazette notification was quashed by this Court with a direction that fresh notification, if any, shall be issued by the respondent authorities upon calling the heirs and legal representatives of the petitioners, therein, to file their objections and only upon receipt of such objection, the matter was directed to be finalised within a period of three months.

The writ petitioners moved this Court by filing the writ petition being W.P.14633(W) of 2003 alleging police inaction.

The Officer-In-Charge, Tiljala Police Station was directed to ensure that no breach of peace took place at the time of construction of the boundary wall by the petitioners, in accordance with law. A subsequent gazette notification was issued by the department on June 28, 2003, which was published in the extraordinary gazette. The declaration of the said notification was made on August 6, 2003. The petitioners' father by filing W.P.12728(W) of 2003 challenged the notification. The writ petition was dismissed with costs.

Aggrieved, the petitioners preferred an appeal before this Court by filing FMA 376 of 2018.

The declaration under the said Act was also challenged by the petitioners by filing a statutory

appeal. The appellate authority passed an order on December 3, 2014. In the meantime, the appeal being FMA 376 of 2018 was heard and disposed of by setting aside the order of the appellate authority. The appellate authority was directed to consider the appeal afresh and ascertain whether the ponds were included in the final statement and whether the possession of the ponds were taken by the said authorities. The appeal was directed to be decided on this issue alone, and not on any other points.

After finalization of the appeal by the appellate authority, the competent authority under the said Act published the final statement. The said statement was notified by the Government of West Bengal, in the Extra Ordinary Gazette dated January 13, 2022. Challenging the final statement, WPA 12839 of 2021 was filed. Another co-ordinate Bench of this Court, quashed the final statement and gazette notification on the ground that the direction of the Division Bench as to whether water body had been included in the final statement was not followed. The final statement did not disclose the actual area of the water body which had been included.

The final statement and the gazette notification was set aside with a direction upon the competent authority to prepare a fresh final

statement on the basis of the joint inspection. Final statement was directed to be prepared within three months.

Mr. Galib, learned advocate for the State respondents submits that in the midst of preparation of the final statement upon holding a joint inspection, the prayer of the petitioners to permit construction of a boundary wall on a portion which may be included in the final statement may not be allowed. It is submitted that this Court had not excluded the plots of the petitioners from the purview of the ceiling under said Act. The reasons why the final statement had been set aside was firstly because the first statement had been published without hearing the affected party and on the second occasion, because the final statement did not include the area of the water body which had been notified therein. However, on both the occasions, the competent authority was directed to prepare the final statement, in accordance with law, upon holding a joint inspection.

Mr. Banerjee, appears on behalf of one of the tenant and submits that a civil suit is pending before the learned Civil Judge (Junior Division), 1st Court at Alipore being Title Suit No. 3319 of 2022. In the said suit the petitioners are the defendants. The said suit is for declaration. It also appears that in a Misc. Appeal,

the petitioners had been restrained from disturbing the peaceful possession of Mr. Banerjee's client.

Mr. Partha Pratim Roy, learned advocate, submits that he is one of the co-sharers of the property claimed by the petitioners and an order permitting the petitioners to construct a boundary wall with police assistance would be a direct denial of the rights of the other co-owners. It is submitted that the vesting proceedings are still pending.

Heard the learned advocates for the respective parties.

The order by which the petitioners were permitted to construct a boundary wall by this court, does not indicate the facts and circumstance in which such order was passed. Neither the background of the case nor the proceedings of vesting under the said Act had been taken note of by the learned Judge. The relevant property in respect of which such order was passed is also not available.

Thus, this court is of the view that the order directing the police to ensure that no breach of peace takes place when the boundary wall is constructed, cannot help the petitioners in this proceeding, specially because the plots in question are still subject matter of a proceeding under the said Act.

None of the courts which had quashed the final statements on the prayers of the petitioners had held that the plots which the petitioners claimed to be owners of, should be excluded from the final statement. The competent authority is yet to prepare the final statement on the basis of a direction of the coordinate bench by holding a joint inspection.

The court is of the view that granting police protection to the petitioner and permitting the petitioners to construct the boundary wall would amount to declaring the right of the petitioners in respect of a property regarding which a vesting proceeding is still pending under the said Act. Such proceeding is to be initiated on the basis of the direction of a coordinate bench. The right of the other co-sharers have also not been decided. The right of the tenant is sub judice before the civil court and the tenant has been sufficiently protected.

It is the specific contention of the co-sharers as also the tenant that by construction of the boundary wall, the petitioners were trying to oust the tenant as also the other co-sharers.

This order shall not be construed as a decision on the right of the petitioners in respect of the plots. Such issues will be decided at the appropriate time after the final statement is published upon holding a joint inspection, as directed by this court.

The writ petition is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)