

05.09.2022
Court. No. 19
Item 37 (ML)
Cp

W.P.A. No. 16582 of 2022

Subankar Mandal & anr.
Vs.
The State of West Bengal & Ors.

Mr. S. Shah
Md. Shamim Halder

... for the petitioners.

Mrs. Sudipa Roy
Mr. S. S. Roy

...for the State.

The petitioners have challenged an order passed by the District Magistrate and Collector, Murshidabad. According to the petitioners the said order is incorrect and not based on facts. It has been specifically contended that the facts as narrated in the order impugned were incorrect. The petitioners were not in a position to make their submissions before the authority. It has been recorded in the order itself, that the petitioner no. 1 reached the venue of the hearing at 4.25 pm. Accordingly, the petitioners pray for an opportunity to make their submissions along with proper documents before the concerned District Magistrate.

The other point as raised by the petitioners is that even assuming that the concerned gram panchayat was in occupation of the land in question,

the decision does not reflect consideration of the other allegation of an alleged construction on the said land without the sanction of law, as the land was classified as 'Aush'. The record of rights has been relied upon.

The District Magistrate has held that the dispute was civil in nature. It was found that the panchayat authorities had been in possession of the land since long and the petitioners had admitted before the Revenue Inspector during an enquiry that the petitioners were not in possession of the said land.

The writ court cannot go into such disputed questions. The order of the District Magistrate relegating the petitioners before the civil court, is based on the facts as transpired during an enquiry and inspection.

It is the specific contention of the petitioners that neither the report of the Block Land & Land Reforms Officer, Nowda nor the report of the Revenue Inspector, Chandpur Gram Panchayat were handed over to the petitioners before such hearing. As such, the petitioners were not in a position to deal with those reports which were used against them. Whether the construction could be made on the land which was classified as 'Aush' as per the allegation of the petitioner, must also be considered.

It is a settled principle of law that if any document is used in a proceeding to the detriment of a

party, the party likely to be adversely affected by such report must be supplied with such report and given an opportunity to controvert the same.

Under such circumstances, the order dated February 15, 2022 passed by the District Magistrate and Collector, Murshidabad, is set aside and cancelled.

The report used by the Block Land & Land Reforms Officer, Nowda and the report of the Revenue Inspector, Chandpur Gram Panchayat shall be supplied to the petitioners. A fresh enquiry/inspection shall be made by the concerned Revenue Inspector or the Block Land and Land Reforms Officer in the presence of the petitioner and the concerned gram panchayat authorities and thereafter, a report shall be prepared and supplied to the parties.

The parties shall be allowed to deal with such report and findings, by filing an objection/exception before the District Magistrate. Upon consideration of the objection of the petitioners and upon hearing the petitioners as also the panchayat authorities, a reasoned order shall be passed and communicated.

This court has not dealt with the factual findings of the District Magistrate, but has set aside the order only on the ground of violation of the principles of natural justice.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

The date of the inspection to be held, shall be notified to the parties.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)