

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 20377 of 2021

Sankar Jana
Vs.
The State of West Bengal & Ors.

Mr. Kaushik Sarkar
... for the petitioner

Ms. Sanghamitra Nandi,
Mr. Raja Ram Banerjee
...for the State

Learned counsel appearing for the petitioner contends that the petitioner was sought to be unlawfully dispossessed from the property-in-question, which has been recorded in the name of the petitioner.

It is further contended that the documents annexed to the affidavit-in-opposition, filed by the respondent-authorities, are contradictory to each other. While Annexure P-2 at page 7 of the affidavit-in-opposition indicates that possession of 3.00 acres of land situated in the locality was received by the signatories on January 11, 1973, apparently pursuant to the Collector's order dated December 22, 1972, Annexure P-3 at page 8 of the affidavit-in-opposition shows that 3.01 acres of land was acquired. The difference in the quantum of land, according to learned counsel for the petitioner, is self-contradictory.

That apart, learned counsel also places reliance on an order passed by the Collector dated November 10, 1993, whereby the Collector had held that the Executive Engineer, Midnapore Construction Division had no *locus standi* in the case and had disposed of the case as not maintainable. The said case pertained to Eviction Case no. 1E of 1993.

By handing over a certified copy of an order dated March 06, 2002 passed in C.O. No. 17278 (W) of 1994 by a coordinate Bench, learned counsel for the petitioner further argues that another eviction proceeding bearing Eviction Case No. 1 of 1994 was again initiated by the Executive Engineer, Midnapore Construction Division (I & WD), Contai, Midnapore, but the same was quashed by the coordinate Bench.

Such repeated attempts on the part of the respondent-authorities to evict the petitioner, it is submitted, indicate the mala fides of the respondent-authorities against the petitioner.

By placing reliance on the notice dated December 03, 2021, annexed at page 25 of the writ petition, learned counsel submits that the said notice is barred both by application of the principle of res judicata (in view of the previous order in respect of the same property), as well as suffers from vagueness in view of the stand of the respondent-authorities being self-contradictory.

It is seen from page 26 of the writ petition that the petitioner, through his learned advocate, had given a demand for justice to the respondent authorities, in particular, the Sub Divisional Officer, (Sectional Officer), Irrigation and Waterways, Egra Irrigation Section, Egra, Purba Medinipore (respondent no. 4 in the present writ petition).

Learned counsel appearing for the respondent-authorities, in her usual fairness, submits that the petitioner can be given an opportunity to appear before the respondent no. 4, for being heard on the demand for justice given by the petitioner, to the said respondent. Subject to the result of such hearing, the respondent-authorities shall take appropriate decision in respect of the notice issued against the petitioner.

Since the petitioner has pointed out certain *prima facie* contradictions in the case of the respondent-authorities, it would not be prudent for the writ court to enter into a factual query upon appreciation of evidence to decide the viability of the respective contentions of the parties.

As such, in view of the fair submission made by the respondent-authorities, W.P.A. No. 20377 of 2021 is disposed of by directing the respondent no. 4, that is, the Sub Divisional Officer, (Sectional Officer), Irrigation and Waterways, Egra Irrigation Section, Egra, Purba Medinipore, to decide the demand for justice dated

December 07, 2021 given by the petitioner through his learned Advocate to the said respondent, upon giving adequate opportunity to the petitioner to be heard and to produce relevant documents in support of the petitioner's contention, as expeditiously as possible, preferably within May 15, 2022, in accordance with law.

It is made clear that the merits of the respective contentions of the parties have not been gone into by this Court and it will be open to the respondent no. 4 to decide the issue without being influenced by any of the observations made herein. However, for the ends of justice, the respondent-authorities shall desist from giving effect to the notice dated December 03, 2021 and/or evicting the petitioner from the premises-in-question without due process of law till the decision is taken finally by the respondent no. 4 as per the above direction. However, this ad interim order shall be subject to the final decision taken by the respondent no. 4.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)