

S/L 9
17.05.2022
Court. No. 19
GB

WPA 18180 of 2019

Motichandra Shaw @ Motichand Gupta & Ors.
VS
The State of West Bengal & Ors.

*Mr. Tapas Kumar Dey,
Mr. Sirsendu Sinha Roy,
Mr. Supreem Naskar.*

...for the Petitioner.

*Mr. Chandi Charan De,
Ms. Reshmi Rahaman,
Mr. Anirban Sarkar.*

...for the State.

Affidavit-of-service filed in Court today, be kept with the record.

The specific allegation of the petitioners is that the authorities of the Ashutosh Gram Panchayat are forcefully trying to enter into the premises of the petitioners, situated at plot nos.1264 and 1268, measuring about 3 decimals in Mouza-Gopinagar within Police Station-Haripal, District – Hooghly.

According to the petitioners, Title Suit No.50 of 2008, which was renumbered as Title Suit No.845 of 2014 was decreed in favour of Motichand Gupta (Shaw), Birmananda Gupta (Shaw), Debananda Gupta (Shaw) and Krishna Gupta (Shaw). The right, title and interest of the said decree-holders in respect of plot no.1268 in its entirety and 3 decimals in plot no.1264 had been declared. The defendants in the suit were restrained by an order of permanent injunction, from disturbing the peaceful possession of the petitioners and father of the petitioners and other heirs in

respect of 3 decimals of land in plot no.1264 and 15 decimals of land in plot no.1268. Such decree was passed on December 23, 2015.

According to the petitioners, the panchayat authorities, despite such a decree of the civil court, have constantly tried to disturb the peaceful possession of the petitioners. The learned advocate for the petitioners further submits that subsequently the property, which was the subject matter of the civil suit was gifted to the petitioners and as such, the writ petition has been filed by the said petitioners.

None appears either on behalf of the panchayat authorities and respondent nos.10 to 13, despite service. The writ petition is taken up in their absence.

Unless the judgment and decree passed by the civil court has either been modified or set aside or varied by a superior authority, the said judgment and decree becomes binding on the parties. The Pradhan of the concerned gram panchayat was one of the defendants, who had suffered the decree.

Under such circumstances, this Court is of the opinion that the right, title and interest with regard to the property in question, cannot be denied by any subsequent action of the panchayat authorities. However, as the factual disputes cannot be adjudicated in this proceeding, this writ petition is disposed of with a direction upon the petitioners to approach the Block Development Officer, Haripal Development Block by filing a composite representation annexing all relevant

documents in respect of the right, title, interest and claim of the petitioners. Such representation shall be filed within two weeks from date. On receipt of the said representation, the concerned Block Development Officer shall dispose of the same in accordance with law, upon hearing the petitioners, the panchayat authorities as also the respondent nos.10 to 13.

This order shall not be construed as an opinion of the Court on the exclusive right of the petitioners in respect of the property. It appears that all the plaintiffs are not petitioners before this Court, only two of the sons of Motichand Gupta (Shaw) have moved the writ petition, whereas the suit was decreed in favour of other children of Motichand Gupta (Shaw).

In any event, the issue for decision here is restricted to the allegation against the panchayat authorities, who have allegedly been trying to grab the property in violation of the order of the civil court. The dispute between the heirs of Motichand Gupta (Shaw) with regard to the title, if any, shall not be decided by the Block Development Officer. The Block Development Officer will only restrict his enquiry with regard to the allegation against the panchayat authorities.

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

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 learned advocate's communication.

(Shampa Sarkar, J.)