

18 07.06.2022
rkd Ct.15

W.P.A. 18508 of 2016

Harisadhan Naskar

-vs-

State of West Bengal & Ors.

Mr. Debabrata Saha Roy,
Mr. Lakshminath Bhattacharya

....for the petitioner.

Mr. Himadri Barua,
Mr. Biswajit Das

....for the respondent nos.5 & 6.

Mr. Amitesh Banerjee,
Mr. Tarak Karan,
Mr. Sanatan Panja

....for the State.

In the writ petition the order of the Chairman of Jaynagar-Majilpur Municipality (hereinafter referred to as the "said Municipality") dated 20th July, 2016 is under challenge.

Mr. Roy, learned advocate appears on behalf of the petitioner and submits that such order has been passed pursuant to the order passed by a coordinate Bench dated 18th May, 2016 on writ petition filed by the present petitioner being WP 29294(W) of 2015. The coordinate Bench while disposing of the previous writ petition directed the said municipality to sanction the writ petitioner's application in accordance with law upon giving opportunity of hearing to the petitioners or their representative within a particular time.

Pursuant to such direction of the coordinate Bench the Chairman of the municipality took up the issue and after hearing the writ petitioner as well as the representative of the B.L. & L.R.O., Jaynagar-I took decision by issuing Memo dated 20th July, 2016. On perusal of the said order dated 20th July, 2016 of the Chairman of the said municipality, it appears that the Chairman on consideration of the respective submissions made on behalf of the petitioner and the representative of the B.L. & L.R.O., Jaynagar-I refused the contention of the petitioner to sanction plan as submitted by the petitioner for making construction on plot no.606 since the said plot was classified as “Doba” as per records maintained in the Office of the concerned B.L. & L.R.O.

The learned advocate representing the petitioner while questioning the decision taken by the Chairman of the said municipality has taken the point of jurisdiction of the Chairman of the said municipality in view of the direction as contained in the order of the coordinate Bench dated 18th May, 2016.

According to the petitioner, direction was given upon the Jaynagar-Majilpur Municipality to take decision therefore as per appreciation of the

said order of the coordinate Bench, Board of Councillors was the appropriate authority to take such decision not the Chairman of the municipality. Furthermore, in order to substantiate the points taken on behalf of the petitioner notice of the Court has been drawn to Mutation Certificate dated 28th September, 2013 issued on behalf of the said municipality wherein plot no.606 was described as “Bastu”.

It is contended on behalf of the petitioner that based on such certificate issued on behalf of the said municipality the petitioner purchased the plots of land being plot nos.606 and 607. It is also submitted that since the construction has been made after making application on expiry of the statutory period of sixty days upon depositing requisite fees of Rs.2 lakhs therefore there is no illegality in constructing over the said plot of land being plot no.606.

This Court while adjudicating the issue involved in writ petition thought it fit to ascertain the nature of the land under said plot no.606 i.e. whether the said land under the plot no.606 is “Bastu” or “Doba”. In order to resolve the issue, this Court directed Mr. Amitesh Banerjee, learned senior Standing Council to file a report which

would indicate whether the land under the said plot no.606 is “Doba” or “Bastu”.

Pursuant to the previous direction passed by this Court, a report in the form of affidavit has been filed before this Court. Such affidavit has been affirmed by the Director of Land Records and Surveys and Joint Land Reforms Commissioner, West Bengal. From paragraph 5(c), (d) and (e) of the said affidavit, it clearly appears that the Director of Land Records and Surveys and Joint Land Reforms Commissioner on scrutinizing the relevant documents has stated that plot no.606 of Mouza-Majilpur JL No.19 under B.L. & L.R.O., Jaynagar-I having total 10 decimal area has been classified as “Doba”. It has also been stated therein that in finally published R.S. record of rights the land under plot no.606 was classified as “Doba”. Question arises that how subsequently for the time being the said plot of land was considered as “Bastu” and the same has been clarified in the affidavit affirmed by the Director of Land Records and Surveys that computerization of the draft records was completed in the year 2012 and subsequently the classification was changed from “Doba” to “Bastu” in the Computerized Land Records (CLR).

It is also stated therein that share, area and classification of the plot was changed at the time in between draft publication and final publication in the Computerized Land Records (CLR) but the mother volume of L.R. record of Rights (prepared manually) has not been changed. It is also stated in the said affidavit that it has been reported by the B.L. & L.R.O., Jaynagar-I that no such order in respect of change of classification of the land in question was issued by the Collector under Section 4C of the West Bengal Land Reforms Act, 1955.

On consideration of the relevant part of the affidavit affirmed by the Director of Land Records and Surveys and Joint Land Reforms Commissioner it is apparent that the land in question under plot no.606 cannot be considered as “Bastu”.

Mr. Barua, learned advocate appears on behalf of the said municipality has submitted that the power of attorney executed by the erstwhile owners of the land for selling the said plot to the petitioner described the land under plot no.606 as “Doba” upon placing reliance on the general power of attorney which is annexed to the affidavit-in-opposition, page no.15 onwards.

This Court has considered the submissions

made on behalf of the parties to this writ petition and has perused the relevant documents including pleadings filed pursuant to the order passed by this Court from time to time.

Question remains to be adjudicated whether the petitioner can maintain the construction which he has already made on the plot no.606 in view of the fact that the said plot has already been classified as “Doba” by the competent authority. It is established position of law that no construction can be made over the plot of land which is classified as “Doba”/”Pond”.

The notice of this Court has already been drawn during course of hearing to page 42 of the affidavit-in-opposition affirmed on behalf of the said municipality wherein the petitioner namely Harisadhan Naskar on 3rd December, 2013 communicated to the concerned B.L. & L.R.O., Jaynagar-I Block that he would convert the land in question into water body. The contents of such writing dated 3rd December, 2013 of the petitioner goes to show that it has also been accepted by the petitioner that the land in question under plot nos.606 and 607 was not classified as “Bastu”.

Only question which is required to be addressed at this juncture whether the Chairman

of the said municipality in terms of the order of the coordinate Bench dated 18th May, 2016 could pass such order since direction was given upon the Jaynagar-Majilpur Municipality to taken decision in accordance with law after giving opportunity of hearing to the petitioner.

Considering the entire gamut of the issue as described in the preceding paragraphs such technical point taken on behalf of the petitioner pales into insignificance in view of the fact this Court has made an exercise to find out whether the land in question under plot nos. 606 and 607 has been classified as “Bastu” or “Doba” by calling for report from the concerned authorities of the State respondents. Accordingly, report has been filed in the form of affidavit which goes to show that the land in question cannot be termed as “Bastu” which negates the right of the petitioner to maintain the construction which has already been made without obtaining sanction from the said municipality.

In view of above discussion, this Court does not find any merit in the writ petition and the same stands dismissed.

Concerned authority of the said municipality is directed to refund of Rs. 2 lacs

which was deposited by the petitioner on 20th February, 2015 forthwith.

However, there shall be no order as to costs.

The concerned municipality shall be at liberty to take necessary steps based on the decision taken in the order dated 20th July, 2016.

From the affidavit affirmed on behalf of the State respondents it appears that unnecessarily the classification of the land in question was changed from “Doba” to “Bastu” in the Computerized Land Records (CLR) without following any prescribed procedure as contemplated under the statute. Such mischief caused in the process of computerization of land records is deprecated and the concerned department is warned that if such incident recur in future the consequential order is to be passed by this Court in appropriate case.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)