

Item no. 07

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice T.S. Sivagnanam

And

The Hon'ble Justice Hiranmay Bhattacharyya

MAT 1926 of 2022
+
IA NO.CAN 1 OF 2022
CAN 2 OF 2022

The Secretary, Irrigation & Waterways Department,
Government of West Bengal & Anr.

vs.

Saharjan Bibi & Ors.

Appearance:

For the Appellants : Mr. Susovan Sengupta
Mr. Subir Pal

For the Respondents /
Writ petitioners : Mr. Mukteswar Maity

Heard on : 16.12.2022

Judgment on : 16.12.2022

T.S. Sivagnanam J.:

In Re : CAN 1 of 2022

1. This is an application to condone the delay in filing the instant appeal.

2. We have heard the learned advocates for the parties.

3. We are satisfied with the reasons assigned in the affidavit filed in support of the application. Accordingly, the delay in filing the instant appeal is condoned.

4. The application for condonation of delay, being IA No.CAN 1 of 2022 is allowed. There shall be no order as to costs.

In Re. MAT 1927 of 2022
with
IA No. CAN 2 of 2022

5. This intra-Court appeal filed by the State of West Bengal and another is directed against the order dated 11th February, 2021 passed in WPA No.21747 of 2019. The said writ petition was filed by the respondents herein stating that the land owned by them was utilized by the Irrigation and Waterways Department, State of West Bengal without the land being acquired in the manner known to law and without compensation being paid. The learned Single Bench took note of a direction issued by this Court in an earlier writ petition filed by the respondents/writ petitioners and wherein it was held that the land has been entered into and utilized by the Irrigation and Waterways Department without initiating any land acquisition proceeding. Therefore, the Court came to the definite conclusion that the onus lies exclusively on the Irrigation and Waterways Department to pay compensation for the land of the writ petitioners and, accordingly, directed the Executive Engineer, Irrigation Department, Kakdwip to take necessary action for payment of compensation in respect of the utilized

land. The said order and direction had attained finality and no appeal had been preferred by the appellants against the said order. Since there was a stalemate in the matter, the writ petitioners again approached this Court by filing a writ petition and in which following direction was issued.

“I have also heard learned counsel for the State.

Let the Executive Engineer of the Irrigation Department, Kakdwip approach the Land Purchase Committee immediately for the purpose of getting the land in question valued. The Executive Engineer will do this within a week from the date of receipt of a copy of this order. The Land Purchase Committee shall do whatever is necessary for getting the land valued and such exercise will be completed within six weeks from the date of the Executive Engineer approaching the Committee.

The Committee shall forthwith communicate to the Executive Engineer the valuation of the land which should be valued at market rate. Upon receipt of such valuation from the Land Purchase Committee, the Executive Engineer, Irrigation Department, Kakdwip, shall ensure that applicable compensation is paid to the petitioners within eight weeks from the date of receipt of the valuation report from the Land Purchase Committee.

The entire exercise aforesaid must be completed within five months from date.

No useful purpose will be served by keeping this writ petition pending.

With the aforesaid observations, the writ petition is disposed of.

In view of the main writ petition being disposed of, the connected applications are also disposed of.

Since no affidavit has been called for, none of the allegations in the writ petition shall be deemed to have been admitted by the respondents.”

6. Mr. Sengupta, learned counsel appearing for the appellants/State would vehemently contend that the order and direction issued by the learned Writ Court is not tenable. He further submits that the learned Writ Court ought to have taken into consideration the relevant provisions, particularly Sections 52 and 60 of the Indian Easements Act, 1882 and would comment upon the conduct of the owners of the land and it is alleged that the lands were given away to the State for making construction of ring bandh/embankments for their own interest as well as for the inhabitants of the locality. Learned advocate for the appellants would also rely upon Section 27 of the Limitation Act, 1963 relating to extinguishment of rights of erstwhile owners over the land in question in terms of law and, therefore, the erstwhile owners as well as their legal heirs, being the writ petitioners, could have right over their plots of land in question and under no circumstances should enforce their rights in terms of law.

7. We have heard the learned advocate for the writ petitioners on the above submissions. At the very outset we need to point out that none of the grounds canvassed by the appellants before us is tenable and cannot be canvassed for more than one reasons. Firstly, the order and direction issued by this Court in the earlier round of litigation ended

in finality and such order dated May 6, 2019 had not been questioned by the appellants. By the said order the Court came to a definite conclusion that the Irrigation and Waterways Department had utilized the land of the writ petitioners without initiating the land acquisition proceedings. Thus, it goes without saying that the Irrigation and Waterways Department have trespassed into a private property in a highhanded manner without initiating the land acquisition proceeding. If such is the fact situation, it would not lie in the mouth of the appellants to refer to the provisions of Indian Easements Act nor can the appellants raise a plea that in terms of Section 27 of the Limitation Act the claim stands extinguished. Such a plea is not only untenable but it is impermissible on the part of the appellants to raise such a contention before this Court.

8. The appellants have forgotten for a moment that they are the State Government and the State Government is bound to protect the rights of the citizens. If the State itself trespasses into a private property in an illegal manner and utilized the property and when the erstwhile land owners comes with begging bowl for compensation, raising frivolous plea to somehow deny and defeat the claim, is nothing sort of fence eating the grass. It will be well justified if we dismiss the appeal with exemplary costs and making all the officers of Irrigation and Waterways Department, who are responsible for this illegal act to be personally proceeded against them but, however, we are conscious of the fact if

such orders are passed, the ultimate sufferer will be none other than the respondents/writ petitioners.

9. Mr. Sengupta, learned counsel for the appellants would submit that the appellants will deposit a sum of Rs.1.5 crores to the Registrar, Original Side of this Court. To a query raised by us as to how the sum of Rs.1.56 crore was arrived at, there was no satisfactory explanation. In any event, the order and direction issued by the learned Single Bench is perfectly in order. It is clear and lucid and the direction has been issued to the appropriate authorities, who are bound to undertake the exercise in a time bound manner. Thus, we find absolutely no ground to interfere with the order passed in the writ petition.

10. In the result the appeal fails and is **dismissed**. Consequently, I.A. No. CAN 2 of 2022 is dismissed.

11. There shall, however, no order as to costs.

12. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

