

10.08.2023
Item No.12
Ct. No.5
CHC
(disposed of)

W.P.L.R.T.9 of 2022
IA NO: CAN/1/2023

**Sri Chandan Kumar Mondal @ Chandan Mondal &
ors.
Vs.
The State of West Bengal & ors.**

Mr. Santimay Bhattacharyya,
Mr. Supratim Dhar,
Mrs. Madhu Priya
...for the petitioners

Mr. Chandi Charan De, Ld. A.G.P.
Mr. Soumitra Bandyopadhyay,
Mr. Anirban Sarkar
...for the State

C.A.N. 1 of 2023 is an application for
restoration.

For the ends of justice, on the basis of the
pleadings made in the petition for restoration, the
order of dismissal dated July 14, 2023 is recalled.

W.P.L.R.T. 9 of 2022 is restored to its file
and number.

C.A.N. 1 of 2023 is allowed.

The writ petitioners assail an order dated
December 7, 2021 passed in M.A.423 of 2015 by
which, the Tribunal found that, there was no violation
of any order of the Tribunal by the respondent
authorities. Consequently, the Tribunal dismissed the
application for contempt.

State is represented.

In the facts of the present case, initially, Civil Suit being Title Suit Nos.191 and 192 of 1963 were instituted *inter alia*, seeking declaration of title. Such suits were dismissed on November 25, 1964. An appeal was carried therefrom. Such appeal was allowed by a judgment and order dated June 24, 1965 passed in Title Appeal Nos.16 and 17 of 1965.

By the judgment and order dated June 24, 1965, the appeal Court declared title of the plaintiffs in both the suits and their possession thereto were confirmed. The defendant no.1 (State) was permanently restrained from taking khas possession of the land comprise in the suit.

The plot numbers involved in the Civil Suits is as follows:-

R.S. Dag No.3685 of Mouza- Kenchkapur, J.L. No.234, Khatian No-120.

Nothing is placed on record to suggest that the judgment of the Appeal Court dated June 24, 1965 was up set.

The parties to the suits are bound by the decree passed by the Appeal Court on June 24, 1965. In 1965, Section 46 of the West Bengal Estate Acquisition Act 1953, was as follows:-

“46:-*Bar to jurisdiction of Civil Court in respect of certain matters- Where an order has been made*

*under sub-section (1) of section 39 directing the preparation or revision of a record-of-rights, on Civil Court shall * * * * entertain any suit or application for the determination of rent or determination of the status of any tenant or the incidents of any tenancy in which the record-of-rights relates, and [if any suit or application, in which any of the aforesaid matters is in issue, is pending] before a Civil Court [on the date of such order, it shall be stayed, and it shall, on the expiry of the period prescribed for an appeal under sub-section (3) of section 14 or when an appeal has been filed under that sub-section, as the case may be, on the disposal of such appeal, abate so far as it relates to any of the aforesaid matters.]*

Bar contemplated in Section 46 of the Act of 1953 was limited to an order made under sub-section (1) of Section 39 directing the preparation or revision of the record of rights.

The suit was for declaration of title and permanent injunction.

It was not related to any order made under sub-section (1) of Section 39 of the Act of 1953. The plea of bar of the suit was not taken by the State although the State was a party defendant in the suit.

The writ petitioners approached the Tribunal for implementation of the judgment dated June 24, 1965 passed in the Title Appeal by way of an Original Application before the West Bengal Land Reforms and Tenancy Tribunal being O.A.3242 of 2013. Such Original Application was disposed of by an order dated May 7, 2014 directing the concerned B.L. & L.R.O to consider and dispose of the representation being annexure 'E' to the Original Application in terms of the judgment and decree passed by the civil suits mentioned above, within six months from the date of communication of such order by giving fair and reasonable opportunity of hearing to the writ petitioners and other interested parties and by a reasoned order.

An order dated February 27, 2015 was passed by the concerned B.L. & L.R.O in Misc. Case No.1 of 2015 which was initiated pursuant to the order of the Tribunal dated May 7, 2014. By the order dated February 27, 2015, the concerned B.L. & L.R.O turned down the request of the writ petitioners to act in terms of the judgment and decree of the Appeal Court.

The writ petitioners filed a contempt petition being M.A.423 of 2015 before the Tribunal which was disposed of by an order dated April 28, 2016. The Tribunal held that the order of the concerned B.L. &

L.R.O. dated February 27, 2015, was not in terms of the Civil Court's judgment and decree and without reference to it. After setting aside the order dated February 27, 2015, the concerned B.L. & L.R.O. was directed to dispose of the representation by a reasoned order in terms of the direction contained in the order dated May 7, 2014 passed by the Tribunal in O.A.3242 of 2013. Again, the concerned B.L. & L.R.O. started another Misc. Case being Misc. Case No.1 of 2016 purporting to act in terms of the order of the Tribunal dated April 28, 2016.

By an order dated August 17, 2016, the concerned B.L. & L.R.O found that the transfer was bad in law and that the writ petitioners cannot claim title in respect of the immovable properties concerned. The request for acting in terms of the judgement and decree of the Civil Court was turned down.

Aggrieved, the writ petitioners filed another application for contempt being M.A.423 of 2015 which was disposed of by the impugned order dated December 7, 2021.

By the impugned order, the Tribunal found that the concerned B.L. & L.R.O. did not act in willful and deliberate violation of the order passed in O.A.3242 of 2013. The Tribunal, therefore, disposed

of the contempt petition without interfering with the order passed by the concerned B.L. & L.R.O.

The concerned B.L. & L.R.O by the order dated August 7, 2016 stated that, the land in question, stood vested with the State, the document of title, was fraudulent, the khatian finally published was binding upon the petitioners and that there was a bar to jurisdiction of the Civil Court in terms of Section 46 of the Act of 1953.

Section 46 of the Act of 1953 was amended in 1973. Prior to its amendment, the bar to Civil Court jurisdiction was limited to an order made under sub-section (1) of Section 39 of the Act of 1953.

The civil suits were filed in 1963. Nothing is placed on record to suggest that in the Civil Suits any order under Section 39(1) of the Act of 1953 was challenged. State was a party defendant in the suit. State never took the plea of lack of jurisdiction of the Civil Court in deciding the issues raised in the suit.

The Appeal Court, framed the issue as to whether, the plaintiffs in the suits had any right, title and interest in respect of the suit land as claimed. Such an issue was answered in the affirmative and in favour of the plaintiff to the suits. The decree on appeal, was passed in presence of the State as a defendant in the suits.

In such circumstances, the decrees passed on appeal, in the two Title Suits become binding upon the respective parties. Issues with regard to the lack of title of the writ petitioners in respect of the plots in question cannot be reopened, and certainly not at the behest of the concerned B.L. & L.R.O.

The writ petitioners herein claim title through the heirs of the deceased plaintiff/appellant of Title Appeal Nos.16 and 17 of 1965. The writ petitioners are entitled to the benefit of the judgment dated June 24, 1965 passed in Title Appeal Nos.16 and 17 of 1965.

In such circumstances, there was an abject failure on the part of the B.L. & L.R.O. in acting in terms of the order of the Appeal Court subsisting on June 24, 1965 and which governs the parties including the State.

In such circumstances, the impugned order of the Tribunal dated December 7, 2021 is set aside. The concerned B.L. & L.R.O. is directed to act in terms of the judgment dated June 24, 1965 rendered in Title Appeal Nos.16 and 17 of 1965.

The concerned B.L. & L.R.O, therefore, will incorporate the names of the writ petitioners herein in the concerned record of rights as expeditiously as possible and preferably within a fortnight from the date of communication of this order to him.

W.P.L.R.T. 9 of 2022 is disposed of
accordingly.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)