

13.2.2023
Ct.19/sl.23
sn

WPA 2260 of 2023

Monoranjan Tripathi
Vs.
The State of West Bengal & Ors.

Mr. Biswajit Dey
Ms. Somashree Saha
...for the petitioner
Mr. Sudipto Panda
Mr. Subrata Ghosh
..for the State

The petitioner has challenged the order of the District Magistrate, Purba Medinipur dated December 28,2022 directing the Sub Divisional Magistrate, Tamluk, to remove all the encroachments from the government land in question, allegedly constructed by the petitioner on L.R.Dag no. 640 of mouza Purusottampur. As per the L.R. record of rights .11 acres of land of plot no. 640 corresponding to Khatian No.739 had been recorded in the name of the District Board, through 'Paschim Banga Sarkar'.

The petitioner submits that the L.R. record of rights was erroneously prepared.

However, the petitioner has not taken any step till date, for correction of the same. The record of rights produced by the West Bengal Land & Land Reforms Officer, Panskura shows that the land has been recorded in the name of the District Board, on behalf of the State of West Bengal.

The land records further reveal that L.R. Plot No.640 was R.S. Plot No.650 and not 650/1771. It

appears that, the petitioner's predecessors were recorded as raiyats in respect of R.S. Plot No.650/1771 and not in R.S. Plot No.650. The R.S. map, L.R. map, R.S. record and L.R. record have all been produced before the court in support of contentions of the respondent authorities. The petitioner asserts his claim on the basis that R.S. Plot No.650/1771 corresponds to as L.R. Plot No.640. Such claim was found to be incorrect.

The petitioner had an opportunity to approach the appropriate authority with his challenge to the entries in the L.R. record of rights and pray for correction of the entry in respect of Plot No.640. He did not take any step.

A road was being constructed on the plot under the MGNREGA by the panchayat authorities. The petitioner approached the authorities with his objection that the construction of the road was on the petitioner's land.

The Additional District Programme Coordinator, MGNREGA directed the Pradhan, Purusottampur Gram Panchayat to remove the construction.

Subsequently, a re-hearing was scheduled when the Pradhan intimated the concerned authority about the factual position that as per the L.R. record of rights, Plot No.640 was recorded in the name of

the District Board on behalf of the Paschim Banga Sarkar.

The authority did not remove the concrete road and a rehearing was notified to the petitioner.

The petitioner approached this Court by filing WPA 4577 of 2018. The writ petition was disposed of by a co-ordinate Bench of this Court asking the petitioner to attend the rehearing scheduled by the Additional District Programme Co-ordinator, MGNREGA and Additional District Magistrate (Development), Purba Medinipur.

With regard to the allegation of erroneous entries in the record of rights, the co-ordinate Bench held that the grievance of the petitioner would be before the West Bengal Land Reforms & Tenancy Tribunal.

The petitioner challenged the order of the co-ordinate Bench by filing an appeal. FMA 1088 of 2022 was registered.

The Hon'ble Division Bench upheld the order of the co-ordinate Bench and directed the petitioner to participate at the rehearing before the Additional District Programme Co-ordinator, MGNREGA and Additional District Magistrate (Development), Purba Medinipur.

An enquiry was conducted and a hearing was given to the petitioner by the District Magistrate, Purba Medinipur.

The District Magistrate, Purba Medinipur by the impugned order dated December 28, 2022, asked the Sub Divisional Magistrate, Tamluk to remove the unauthorized construction from the government land, namely, L.R. dag no. 640 of mouza Purusottampur.

Such order is being challenged in this writ petition.

The writ court cannot enter into an adjudication of title or possession. The dispute arose when the panchayat authorities started construction of the road under the MGNREGA over a land, which the petitioner claims to be his own. The authorities claim the land was government land. Records of rights, report filed by the Revenue Inspector before District Magistrate, the L.R. map, R.S. map all indicate that the land has been recorded in the name of the District Board on behalf of the State of West Bengal.

The earlier proceeding was initiated by the petitioner challenging implementation of the scheme for construction of a road over his land. Initially, the Additional District Programme Co-ordinator, MGNREGA had directed that the road should be

removed on the basis of the papers supplied by the petitioner. When the Pradhan intimated the Programme Co-ordinator, MGNREGA that the land was recorded in the name of the District Board, a re-hearing was scheduled. The petitioner was asked by a Co-ordinate Bench and by the Hon'ble Division Bench to attend the hearing before the said District Co-ordinator. A hearing was given by the District Co-ordinator, a superior officer and it was found that the land belongs to the District Board and all unauthorized structure on the said land should be removed.

Thus, the allegation of the petitioner that the construction of a road was over his land was found to be incorrect on the basis of the land records and reports of the authorities which were available before the District Magistrate.

The challenge of the petitioner has ended with the finding that the petitioner had encroached government land. Such finding was arrived at upon an enquiry, when the petitioner complained about encroachment of his land by the panchayat authorities. The said findings had reached a finality insofar as the implementation of MGNREGA scheme was concerned.

The writ court cannot further go into title and possession. The scope of judicial review is limited to

an adjudication as to whether the authorities had proceeded in accordance with law. All the land records support the contention of the authorities and the allegation of the petitioner has been proved to be incorrect. The authorities proceeded on the basis of the land records. The petitioner slept over his rights since long, even though he alleged that the record of rights had been erroneously prepared. Further adjudication with regard to the title of the petitioner would transform the writ court into a civil court. The authority proceeded on the basis of land records. Admittedly, L.R. Plot No.640 is not in the name of the petitioner. The petitioner also admits that the road is being constructed on the said plot.

In the opinion of the Court, removal of encroachment from government land can be done in terms of the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962.

The finding of the District Magistrate shall be taken as an opinion of unauthorized occupation by the petitioner over land belonging to the state government. The effect of such decision is that the construction of the road by the panchayat authority was on government land and not over the land of the petitioner, as complained of by the petitioner.

Now, if the authorities wish to remove the constructions made by the petitioner over public

land, proceedings must be initiated in terms of the 1962 Act. The competent authority under the said law shall initiate the proceeding and issue notice upon the petitioner. The petitioner shall appear before the authority with his arguments and contentions. The provisions of the said Act, must be followed.

The entire matter shall be decided independently and reached to its logical conclusion in accordance with law.

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

This writ petition is disposed of.

There will be, however, no order as to costs.

All parties are directed to act on the server copy of this order.

(Shampa Sarkar, J.)