

06.10.2023

Ct. no.654

Sl. Nos4

sn

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION**

WPA 2574 2023

**Manju Dutta
Vs.
State of West Bengal & Ors.**

Mr. Krishna Das Poddar

..for the petitioner

Mr. Sanka Subhhra Ray

..for the municipality

Mr. Chandi Charan De, learned Additional
Government Pleader

..for State

Affidavit-of-service filed by the petitioner is taken
on record.

This writ petition is filed by the petitioner under
Article 226 of the Constitution of India challenging the
order passed by the Deputy R.R. Commissioner, West
Bengal dated 30th November, 2021 pursuant to the
order passed by this Court in WPA 3614 of 2021.

The brief fact of the case in a nutshell is that the
husband of the petitioner, since deceased, and his
brother Dilip Kumar Dutta were occupiers in respect of
the land within EP no.18, SP no.11 corresponding to
C.S. Dag no.1690(p), Jatindas Nagore, Belghoria
measuring more or less 4 cottahs and 2 chittacks.
Previously, the son of the petitioner, Samaresh Dutta,
filed a writ petition for consideration of the
representation made by his father dated 10th
December, 2018 and 18th November, 2020 through
learned advocate for issuance of “*Patta*” in their favour

being WPA 3614 of 2021. The aforesaid writ petition was disposed of directing Deputy Director (Regularisation), RR and R department, Government of West Bengal, to consider and dispose of the representation dated 10th December, 2018 and November 18, 2020. Pursuant to the order passed in the writ petition, the authority concerned disposed of the representation negating the claim of the petitioner's son Samaresh Dutta of half share of the land in question.

Being aggrieved by such order, the petitioner has preferred the present writ petition.

Mr. Krishna Das Poddar, learned advocate for the petitioner submits that as per the record of the Government, the husband of the petitioner namely Subrata Dutta and his brother Dilip Kumar Dutta were the occupiers of the land in question having half share each in the said plot. However, the concerned authority while disposing of the application failed to appreciate the provision of Succession Act which entitles legal heirs to succeed the extent and portion of their respective predecessor-in-interest. Thus there cannot be apportionment of the entire plot in favour of the existing legal heirs of both the brother equally which is beyond the scope of law. He submits that legal heirs of Subrata Dutta (one of the occupiers of the plot-in-

question) namely Manju Dutta (petitioner and wife), Samaresh Dutta (son) and Shrabani Sardar (daughter) of Subrata Dutta (since deceased) are jointly entitled to half share that is, 2 cottahs and 1 chittack of the land in question. In the light of his aforesaid submissions, he prays for setting aside the order passed by the concerned authority and issuing necessary directions in this regard.

None appears on behalf of the State respondents.

Mr. Chandi Charan De, learned Additional Government Pleader, who usually appears on behalf of the State respondents is requested to appear in this matter. Let appointment of Mr. Chandi Charan De, learned Additional Government Pleader be regularised by the concerned authority.

Mr. Chandi Charan De, learned Additional Government Pleader also submits that legal heirs of the occupiers (since deceased) are entitled to share of their predecessor-in-interest. He submits for passing necessary directions for reconsideration of the prayer of the petitioner by the concerned authority.

Mr. Sankha Subhra Ray, learned advocate for the respondent no.5, Chairman, Kamarhati Municipality, leaves the matter to the discretion of the Court.

Upon perusal of the letter dated 3rd January, 2013 issued by the State Public Information Officer and

Director (land) in response to the application under Right to Information Act on 8th October, 2012(Annexure P/1) it is found that as per office record the occupier of the land in question is Dilip Kumar Dutta and Subrata Dutta. Therefore, Dilip Kumar Dutta and Subrata Dutta had equal share in the plot of land in question.

The Deputy R.R. Commissioner, West Bengal, while disposing of the representation in terms of the order passed in WPA 3614 of 2021 negated the claim of Samaresh Duta (son) of late father Subrata Dutta to the extent of 50% share in the plot-in-question observing that he had failed to establish the same. As per official records Subrata Dutta, predecessor in interest of the petitioner and his brother Dilip Kumar Dutta had equal share in the plot-in-question. It is true that Samaresh Dutta (son) of late Subrata Dutta cannot claim the entire 50% share of his late father in the plot-in-question. However, the petitioner, being the wife of Subrata Dutta, her son Samaresh Dutta and daughter Shrabani Sardar being the other legal heirs of Subrata Dutta are jointly entitled to have the half share of their predecessor-in-interest to the extent of 2 cottahs and 1 chittack in the plot-in-question.

In view of the above discussion, the order passed by the Deputy RR Commissioner, West Bengal, dated 30th November, 2021 is hereby set aside.

The Deputy RR Commissioner, West Bengal is directed to reconsider the representation dated 10th December, 2018 and 8th November, 2020 afresh in the light of the observations made hereinabove and dispose of the same within a period of three months from the date of communication of this order after giving an opportunity of hearing to the petitioner as well as other interested parties. The result of such disposal be communicated to the petitioner within a week thereof.

With the aforesaid observation, the present writ petition being **WPA 2574 of 2023** stands disposed of. No order as to costs.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)