

Item No.49

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

29.11.2023
Ct-24

WPA 4853 of 2023
Shobha Ghoshal @ Shobha Rani Ghoshal & Anr.
v.
The State of West Bengal & Ors.

Mr. Biswajit Sau
Mr. Sohham Sau
... for the petitioners.

Mr. Jahar Dutta
Mr. Bipin Ghosh
... for the State.

Mr. Anuruzzaman
... for the Municipality.

Mr. Satyajit Talikdar
Ms. R. Verma
... for KMDA.

Mr. Saddam Navas, DL & LRO, South 24 Parganas, Mr. Debashis Biswas, BL & LRO, Sonarpur, Mr. Dipto Roy Chowdhury, Executive Engineer, KMDA, Mr. Narayan Das, Municipal Civil Engineer, Rajpur-Sonarpur Municipality and Mr. Alope Kumar Mondal, S.A.E, Rajpur-Sonarpur Municipality are personally present in Court in compliance of the direction passed by this Court on November 20, 2023.

The DL & LRO has been heard. It appears from the submission made by the DL & LRO, South 24 Parganas, Alipore that in view of the non-correction of the record-of-rights, the decree passed by the learned Civil Court declaring that the plaintiff, i.e., the predecessor-in-interest of the petitioners herein, has the right, title and interest in respect of the suit property and that the defendants being the State is permanently

restrained from disturbing the plaintiff's peaceful possession, was not noticed at the time of intimating the Municipality the status of the land in question.

The decree was passed by the learned Court in respect of total 11 decimals of land. Out of the 11 decimals, 3 decimal of land was sold by the predecessor-in-interest of the petitioners and the record was corrected only in respect of the 3 decimals of land. As regards the balance 8 decimals of land, the records remained uncorrected.

The State respondents mistakenly intimated the Municipality that the land was vested to the State. The Municipality thereafter engaged the KMDA to develop the said land. After the KMDA started making construction thereon, the petitioners filed the instant writ petition.

Enough confusion has been caused with regard to the plot number of the land which is alleged to be vested to the State. The schedule of the decree passed by the learned Trial Court specifies the plot number and there ought not to be any uncertainty with regard to the same. Existence of the land of the petitioners cannot be denied and the said land cannot be taken away without applying the proper provision of law.

The BL & LRO, Sonarpur, South 24 Parganas by a communication dated June 15, 2022 addressed to the Chairman of Rajpur-Sonarpur Municipality specifically made it clear that in respect of Mouja-Noapara, J.L. No. 40, R.S. Plot No. 132 corresponding to L.R. Plot No. 134 was vested to the State.

The decree passed by the learned Court below mentions the R.S. Plot No. as 132 and area 11 decimals.

This Court, accordingly, is of the opinion that the construction in question has been made over the private land of the petitioners.

This Court on July 11, 2023 recorded that, in the event, the Municipality intends to utilize the land and the construction made thereon, then it will be open for the Municipality to initiate proceeding for acquiring the land in question upon payment of compensation in accordance with law.

The Municipality is directed to take a decision as to whether the land will be required for any public purpose for which acquisition of the land may be necessary. If the Municipality is of the opinion that the land will not be required for public purpose, then the same has to be vacated.

A decision shall be taken by the Municipality at the earliest but positively within a period of eight weeks from the date of communication of this order.

In the event, the petitioners apply for correction of the record-of-rights, the same shall be taken up for consideration by the concerned authority in accordance with law after giving an opportunity of hearing to the necessary parties.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)