

26.04.2023
Court No. 19
Item no.08
CP

WPA No. 5692 of 2023

Sri Abantia Dinda
Vs.
The State of West Bengal & Ors.

Mr. Mukteshwar Maity
Mrs. S. P. Chowdhury

....for the petitioner.

Mr. D. N. Mukherjee
Mr. Janardan Mandal

.....for the State respondents.

The petitioner has alleged that the respondent nos. 10 to 17 being encouraged by the Pradhan of Patharpratima Gram Panchayat, started raising a construction on L.R. Plot No. 152 of Mouza – Dakshin Shibganj. The said construction is allegedly a ‘sulav complex’.

The petitioner contends that the order of injunction passed by the learned Civil Court in Title Suit No. 10 of 2021, had been violated.

The petitioner claims right over the said land on the basis of a ‘Ammoktarnama’ executed in favour of the petitioner by the alleged owners of the property in question, whose names had been entered in the record of rights.

As the petitioner had made allegations against the concerned gram panchayat, the court deemed it fit to direct the Block Development Officer to file a

report upon making an enquiry on the basis of the allegations made by the petitioner.

On the last occasion, a report had been filed by the Block Development Officer dated April 4, 2023. It appears from the said report that the construction of the 'Sulav Toilet' was for the benefit of the public. The site was close to the ferry ghat and the jetty and frequented by many travellers.

The 'Sulav Toilet' is maintained by the Patharpratima Panchayat Samiti, Ramganga. The toilet which had existed at the said site, had been damaged and a new toilet was decided to be constructed from the funds obtained under the 15th Finance Commission. The work order was issued on October 17, 2022. The petitioner lodged an objection on November 24, 2022. The petitioner was called for a hearing. The petitioner undertook to submit documents in support of his contentions that the said plot belonged to the owners represented by the petitioner, but no such documents were ultimately submitted.

The panchayat samiti obtained the latest status report with regard to the land and it was found that 35 decimals of Plot No. 152 of Mouza – Dakshin Shibganj, J.L. No. 53 was recorded in the name of the District Collector, South 24-Parganas. The petitioner once again approached the authority

with an objection, inter alia, stating that in view of the decision in O.S. Case No. 468/1977 and during pendency of O.A. Case No. 4177/2014 before the Land Reforms & Tenancy Tribunal, no project should be implemented on the said land. The learned advocate for the petitioner also sent another letter asking the authorities to stay their hands in view of the order of injunction passed in Title Suit No. 10 of 2021.

At the enquiry made by the Block Development Officer, 11 out of 27 owners appeared personally and 14 of them sent their representatives with authorization letters. All the persons who appeared showed the RS record of rights, whereas the recent LR records revealed that the land had vested in favour of the State of West Bengal.

The petitioner's right, based on the 'Ammoktarnama', was found to be controversial as such 'Ammoktarnama' was issued in favour of the petitioner in 2021, whereas the lands had vested prior to execution of the deed.

The petitioner was allowed to file exceptions to the report. Specific points had been raised by the petitioner as follows:

- a) The petitioner was not notified of any existing scheme or work allotted under the 15th Finance Commission.

- b) That Plot No. 152 measured about 59 decimals but only a portion of the same had vested.
- c) Without demarcation of the area vested, the 'Sulav Complex' should not be constructed.
- d) Big Raiyat proceedings had been initiated against the erstwhile owners being O.S. Case No. 468/1977 and the predecessors-in-interest of the owners, namely, Pulin Behari Maity retained 51 decimals out of 59 decimals of Plot No. 152, which was also mentioned in the report filed by the Block Development Officer before the Land Reforms and Tenancy Tribunal.
- e) Unless the Title Suit and the original application before the Land Reforms & Tenancy Tribunal are disposed of, no construction should be made.

The writ petition was filed alleging overt act of the panchayat authorities in raising a construction on the private land of the petitioner. The court intervened in order to ascertain whether the allegations were correct as the law provided that private lands could only be used for public purpose, upon compensating the land owners in terms of Section 44 of the West Bengal Panchayat Act, 1973. Hence the report was called for. The report indicates

that 35 decimals of the land had vested in the State of West Bengal, out of 59 decimals. The recent record of rights was consulted and the project was sought to be implemented from the funds disbursed to the local body under the 15th Finance Commission.

There is a time limit within which such funds have to be utilized. The proceedings before the civil court against the private parties and the tribunal, challenging the vesting order are separate and distinct from this proceeding. The petitioner/owners have already availed of their remedies under the civil law as also under the special statute for necessary orders. Unless the competent courts decide the right, title and interest of the owners in respect of the entire plot and set aside the vesting orders, this court should not stall a public project. The report of the Block Development Officer sufficiently clarifies that the construction is on a vested land.

The petitioner is at liberty to raise all his objections before the appropriate courts and forum, before which the proceedings are pending. The construction of the Sulav Complex will be subject to further orders that may be passed in such proceedings.

The construction of the 'Sulav Complex' shall continue subject to further decisions of the competent courts of law.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)