

Item no. 41

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

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 8482 of 2021

Fani Khan & ors.

vs.

State of West Bengal & ors.

Appearance:

For the petitioners : Md. Sarwar Jahan
Md. Ashraful Haque
Mr. Shahzad Noor Tandon

For the Respondents : Mr. Soumitra Bandyopadhyay
(State) Mr. Priyabrata Batabyal

Heard on : 02.03.2023

Judgment on : 02.03.2023

Hiranmay Bhattacharyya, J.:

The petitioners have challenged the order dated 18.01.2021 passed by the District Magistrate, Murshidabad. The petitioners claim to be the Patta Holders in respect of R.S. & L.R. plot no. 209 Mouza Garsama under J.L. no. 96 within Nabagram Block under Nabagram Police Station in the District of Murshidabad.

Pursuant to a direction passed by this Hon'ble Court on 15.10.2020 in W.P. 18169(W)/2019, the Sub-Divisional Officer, Lalbagh, Murshidabad rejected the petition for cancellation of Patta at the instance of Zilla Parishad, Murshidabad. After disposing of the application for cancellation of Patta by an order dated 23.12.2020, the Sub-Divisional Officer, Lalbagh, Murshidabad referred the matter to the District Magistrate, Murshidabad, who in turn, by an order dated 18.01.2021, was pleased to dispose of the matter upon observing that the Patta Holders and the Zilla Parishad, Murshidabad were unable to substantiate their claims.

Being aggrieved by such observation of the District Magistrate, Murshidabad which, according to the petitioner, amounted to reversing the order passed by the Sub-Divisional Officer, Lalbagh, Murshidabad, the petitioner approached this Court by way of this writ petition.

Learned counsel for the petitioner submits that the Sub-Divisional Officer, Lalbagh, Murshidabad after considering the materials on record passed a reasoned order thereby rejecting the application for cancellation of Patta. However, the District Magistrate, Murshidabad without taking note of the observations made by the Sub-Divisional Officer observed that the writ petitioners were unable to substantiate their claims.

Learned counsel for the State submits that the writ petition is not maintainable in view of the existence of an alternative efficacious remedy by way of an application under Section 10 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997. Learned counsel for the State further submits that the cancellation of Patta was in terms of Section 49 of the West Bengal Land Reforms Act and since the West Bengal Land Reforms Act is a specified Act under Section 2(r) of the 1997 Act, this

Court does not have the jurisdiction to entertain this writ petition. He further submits that it would be evident from the order passed by the District Magistrate, Murshidabad that the order passed by the Sub-Divisional Officer was not interfered with by the District Magistrate, Murshidabad.

Heard learned counsel for the parties at length and considered the materials on record.

A co-ordinate bench of this Court by an order dated 15.10.2020 directed the District Magistrate and Collector, Murshidabad to consider the issue of cancellation of patta as well as the representation of the petitioners/ patta holders dated August 14, 2019 by passing a reasoned order.

The District Magistrate, after taking into consideration Chapter XIV Rule 209 (iii) of the West Bengal Land Reforms Manual, 1991 observed in Order no. 1 dated 23.11.20 that the Sub Divisional Officer has been appointed as Revenue Officer for the purpose of Section 49(2) of the West Bengal Land Reforms Act, 1955. The District Magistrate accordingly directed the Sub Divisional Officer, Lalgachh to dispose of the petition submitted by the Zilla Parishad Murshidabad for cancellation of patta.

The Sub-Divisional Officer, Lalgachh, Murshidabad in its order dated 23.12.2020 has specifically observed as follows:

“2. The RS & LR plot no. 209, total area 22.47 acres, classification “Pukurpar” is also vested to the state. Out of that total area of 22.47 acres of land, 15.91 acres has been settled as patta amongst 54 number of beneficiaries on 09.02.1983 vide patta settlement case no. 62/XII/82-83 u/s 49(1) of WBLR Act, 1955. Names of 26 pattadars with total area of 7.68 acres have been recorded in present CLR and the remaining 14.79 acres of land is still recorded in LR Khatian no. 1 in the name of collector.

3. As per a copy of a letter dated 31.08.1988 by the then JLRO, Nabagram it appears that on the basis of a resolution of Bon O Bhumi-sanskar Sthayee Samity meeting dated 23.08.1988 in respect of the plot no.

209 he asked the patta holders to return their pattas for some public purpose over the suit land.

Considered the above facts. From the above facts it reveals that

1. Plot no. 208 is a waterbody classified as “Pukur” and plot no. 209 is a complete separate plot classified as “Pukurpar”.

2. Murshidabad Zilla Parishad is unable to produce any authenticated document regarding ownership of plot no. 208 & 209 or any document regarding transfer of the said vested land to Murshidabad Zilla Parishad from L & LR and RR & R dept.

So, Murshidabad Zilla Parishad has no locus standi over plot no. 209, vested to the Govt, with an area of 22.47 acre of mouza Garsama, JL no. 96. On the other hand 15.91 acres out of 22.47 acres of the suit land has been settled with 54 nos. of beneficiaries in the year 1983 vide settlement case no. 62/XII/82-83.

Further, the petition of Murshidabad Zilla Parishad that both the lands i.e. plot no. 208 and 209 should ideally be under same ownership is also not tenable as it could not produce any document regarding ownership of plot no 208.

Hence the petition for cancellation of Patta vide memo no 94-C/ADM(ZP)/MSD/ENs dated 22/09/2020 of Additional District Magistrate (ZP) & Additional Executive Officer, Murshidabad Zilla Parishad is hereby rejected. ”

Hence, it appears from the said order that the Sub-Divisional Officer, Lalbagh, Murshidabad after specifically observing that the Zilla Parishad, Murshidabad has no locus standi over plot no. 209 which is the subject matter of this writ petition, rejected the application for cancellation of Patta. The order of the Sub Divisional Officer, Murshidabad was in favour of the writ petitioner. Therefore, the writ petitioners cannot be said to be “persons aggrieved” against the order of the Sub Divisional Officer. In view thereof, this Court is not inclined to accept the contention of Mr. Bandyopadhyay that the writ petitioner ought to have approached the West Bengal Land Reforms and Tenancy Tribunal against the order of the District Magistrate

dated 18.01.2021 is concerned as such order was not passed by the District Magistrate as the appellate authority of the order passed by the Sub Divisional Officer on the issue of cancellation of patta which will be evident from a bare reading of the order dated 18.01.2021.

The District Magistrate passed the order dated 18.01.2021 in terms of the direction contained in the order passed by the co-ordinate bench in the earlier writ petition wherein the representation of the petitioner dated 14.08.2019 was directed to be considered and not as an appellate authority of the S.D.O. Therefore, this Court is of the considered view that this writ petition is maintainable.

The District Magistrate, while considering the representation of the petitioner dated 14.08.2019 took note of the observation of the order passed by the S.D.O Lalbagh and observed that the patta holders were unable to substantiate their claims. This observation created a confusion in the mind of the petitioner and the learned advocate for the petitioner was prompted to argue that the District Magistrate, Murshidabad in its turn totally misread the findings and observations made in the order passed by the Sub-Divisional Officer, Lalbagh, Murshidabad. This Court holds that the District Magistrate was not justified in making such observations which would have the effect of reversing the order of SDO.

Therefore, the observation of the District Magistrate, Murshidabad in the order dated 18.01.2021 to the effect that the Patta Holders were unable to substantiate their claims stands set aside and quashed and the order of the Sub-Divisional Officer, Lalbagh, Murshidabad rejecting the application for cancellation of the Patta stands restored.

With the above observations, the instant writ petition stands **disposed of**, however, without any order as to costs. Connected application, if any, also stands disposed of.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)

Amitava Nag (AR. CT.)