

26.04.2023
Item No.5
gd/ssd

FMA/693/2022
IA NO: CAN/1/2022
SANKAR JANA
VS
STATE OF WEST BENGAL AND ORS.

Mr. Kaushik Sarkar
..for the Appellant.

Ms. Sanghamitra Nandy,
Mr. Rajaram Banerjee
..for the State.

1. This intra court appeal by the writ petitioner is directed against the order dated 11.03.2022 in WPA 20377 of 2021. The said writ petition was filed by the appellant contending that the respondent authorities are unlawfully trying to dispossess the appellant from the property in question which, according to the appellant, measures an extent of eight decimals.

2. The appellant's contention is that the action initiated by the respondent authorities is clearly hit by the principles of res judicata. It is pointed out that at the first instance attempt was made by the Executive Engineer of the Midnapore Construction Division in the year 1993 and an eviction case being Case No.1E of 1993 was filed by the said Executive Engineer, Midnapore Construction Division (I & WD), Contai. The respondents were the parents of the

appellant. The Collector, Contai by order dated 10th November, 1993 held that the complainant, namely, the Executive Engineer of the Midnapore Construction Division has not established their locus standi in the case and did not show the memo on which the land was transferred to the said department. Therefore, the case was disposed of as not maintainable. It is thereafter the very same department appears to have issued another notice in the year 1994 to the parents of the appellant. This notice was put to challenge before this Court in C.O. 17278(W) of 1994. The said writ petition was allowed by order dated 06.03.2002. Largely for such reasons that the earlier eviction case filed by the department was dismissed. The said order reads as follows:

“The petitioner herein has challenged the proceeding initiated before the Sub-Divisional Officer, Contai, under Section 2 of the West Bengal Act XIII of 1962 by the Executive Engineer, Midnapore Construction Division (I & WD), Contai, Midnapore in the year 1994 which was registered as Eviction Case No.1 of 1994. It appears from the record that previously an identical application was filed by the same officer, namely, the Executive Engineer, Midnapore Construction Division (I & WD), Contai, Midnapore, before the Sub-Divisional Officer, Contai, under Section 2 of the West Bengal Act XIII of 1962 in the year 1993 on identical ground and the said application was registered as Eviction Case No.1E of 1993. The learned Counsel appearing on behalf of the petitioner submits that the earlier Eviction Case being No.1E of 1993 filed by the Executive Engineer, Midnapore Construction Division (I & WD), Contai has

been finally disposed of by the Collector on 10th November, 1993. The order passed by the Collector on 10th November, 1993 is set out hereunder :-

“ Both are absent more than 3 (three) consecutive dates. In the present settlement Plot No. 1868 belongs to the Midnapore Zilla Parishad Deptt. (Hal Karcha enclosed) . Here the complainant is Executive Engineer, Midnapore Construction Division. There is no locus standi in this case. He did not show the Memo on which the land was transferred to this Deptt.

For this reason the case is not maintainable. Hence the case is disposed of.”

In view of the dismissal of the earlier Eviction Case No.1E of 1993 by the Collector, subsequent application on the identical ground cannot be filed by the same authority for eviction of the petitioner from the land in question particularly when the Collector while passing the order on 10th November, 1993 specifically held that the Executive Engineer, Midnapore, had no locus standi to file the said application. The applicant neither preferred any appeal nor filed an application for review under Section 7 of the Public Land (Eviction of Unauthorised Occupants) Act and thus the said order passed by the Collector has become final and binding upon the parties.

Having heard the learned Counsel appearing for the parties and considering the facts of the case, I am of the view that the officer concerned, namely, the Executive Engineer, Midnapore Construction Division (I & WD), Contai, is not entitled to file a similar application subsequently in the year 1994 for eviction of the petitioner from the land in question on identical grounds instead of preferring an appeal from the earlier order dated 10th November, 1993 passed by the Collector.

Accordingly, the Writ Petition succeeds and the same is thus allowed.”

3. The appellant being aggrieved by the third attempt made by the respondent department approached the Writ Court and the learned Writ Court had directed the 4th respondent, namely, the Sub-Divisional Officer to hear the appellant and decide the matter.

4. After considering the facts and circumstances of the case, we are of the view that as of now in the light of the order passed by the Collector, Contai as well as the order passed by this Court in the aforementioned writ petition the third proceedings in respect of the same property would not be maintainable unless and until the respondent department is able to get their title declared to the property which should be done in the manner known to law.

5. The learned State counsel would submit that the extent of the property which is claimed by the appellant is eight decimal. She further submits that apart from eight decimal which is alleged to be in possession of the appellant, the appellant has encroached adjoining portions and have put up illegal construction without obtaining approved building plan.

6. This aspect of the matter is quite different and distinct from the grievance which the appellant had espoused in the writ petition.

7. Therefore, we are of the view that in so far as the said eight decimal is concerned which are covered by the earlier order of the Collector, Contai and the earlier order in the writ petition dated 06.03.2002, the respondent department cannot take action unless and until they obtain appropriate orders declaring their right over the property. However, in respect of the remaining area where there is an allegation of encroachment, it is well open to the respondent department to conduct a survey of the area to which the appellant should cooperate and upon his failure, the respondent department is entitled to seek police protection and survey be conducted and if there is any encroachment beyond eight decimal or any illegal construction has been put up by the appellant without building plan approval, action be initiated by the respondent forthwith.

8. Needless to state that during the survey the appellant shall produce all the documents which are in possession to the authorities.

9. With the above observations, the appeal is allowed in part.

(T. S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)