

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA 7553 of 2008

**Kameshwar Narayan Singh
Vs.
The State of West Bengal & Ors.**

With

WPA 9021 of 2007

**Rita Singh (Mitra) & Anr.
Vs.
The State of West Bengal & Ors.**

For the Petitioner in WPA 9021 of 2007:

Ms. Subhanwita Ghosh

For the Respondent No.5 & 6 in WPA 7553 of 2008:

Ms. Subhanwita Ghosh

Hearing concluded on: 12 September, 2023.

Judgment on: 16 October, 2023.

BIBEK CHAUDHURI, J. : –

1. The above mentioned writ petition involves similar issues of facts and law. Therefore, this Court heard both the writ petitions together and this Court delivers the following common judgment in both the writ petitions.

2. On 19th March, 2008, the Additional District Magistrate and District Land and Land Reforms Officer, Hooghly wrote a letter to the petitioner restraining operation of M/s K. Narayan & Co. brick field over disputed

plot of land bearing Dag Nos.812(P), 839(P), 860(P) and 881(P) of Mouza Baidyabati in the District of Hooghly, as the petitioner allegedly failed to produce any clear, undisputed litigation free documents in support of his ownership over the disputed land.

3. The said letter is impugned in the instant writ petition.

4. Before dealing with the respective cases, the following facts are required to be recorded for proper appraisal of the dispute. The subject property was originally owned and possessed by one Ganesh Singh. He died intestate leaving behind three sons, namely, Nathuni, Ramayan and Parasuram. Sometimes in the year 1970 one Kamtaprasad Singh, since deceased, father of the petitioner and private respondents No.5 and 6, along with Parasuram and Smt. Dalraj Singh, wife of Nathuni, filed Title Suit No.74 of 1970 against Ramayan Singh for partition of their joint property. The defendant being Ramayan Singh did not contest the said suit. The said suit for partition was decreed ex-parte declaring that $2/3^{\text{rd}}$ share is of the plaintiffs and $1/3^{\text{rd}}$ share is of the defendant. Kamtaprasad died leaving behind his son Kameshwar Narayan Singh, the petitioner herein, private respondent Nos.5 and 6 and his wife as his legal heirs and representatives on 7th October, 2006. Ramayan Singh and his wife also died issueless and $1/3$ share in the property owned by Ramayan Singh devolved upon the petitioner and the private respondents in equal share.

5. Under such factual backdrop, it is the case of the petitioner who happens to be the elder brother of the private respondents No.5 and 6 that he is the owner of a brick field under the name and style of M/s K.

Narayan & Co. situated at R.S Plot No.812, 813 and 814, appertaining to RS khatian No.1624 of Mouza Baidyabati, District Hooghly. Smt. Lalita Debi, mother of the petitioner executed and registered four deeds of gift in favour of the petitioner in respect of her 8 anna share in the aforementioned plots which she purchased from one Kanailal Goswami and others by a deed of sale dated 20th May, 1975. Kamta Prasad Singh, since deceased, father of the petitioner transferred 50% share of land in the said three plots which he purchased in auction sale in connection with Title Execution Case No.23 of 1968 in favour of the petitioner, by executing three registered deeds of sale dated 6th March, 1989 and 16th December, 1989. Thus, the petitioner became the absolute lawful owner of the entire land in the above mentioned plots and had been running a brick field since 1989-90 without any interruption or disturbance till 19th March, 2008, when he received the impugned letter issued by the respondent No.2. The petitioner had trade licence in respect of the said business. He has been paying municipal tax in respect of the said brick field. He has been also paying royalty and cess to the Government in respect of his business. It is alleged by the petitioner that the respondents No.5 and 6 have been trying their best to put a stop to the running of brick field by the petitioner and with that end in view, they filed Title Suit No.11 of 2007 for partition, injunction and other reliefs in the 2nd Court of the learned Civil Judge (Senior Division), Hooghly which was registered as Title Suit No.11 of 2007. The private respondents also filed an application for injunction under Order 39 Rules 1 and 2 read with Section 151 of the

Cr.P.C praying for temporary as well as ad-interim injunction. The learned trial judge upon hearing the parties, passed an order dated 12th February, 2007 directing both the parties to maintain status quo in respect of the nature and character of the suit property for a limited period of time.

6. The private respondents also filed an application under Article 226 of the Constitution of India before this Court which was registered as WP No.9021 of 2007 against the petitioner and others praying for issuance of a writ of mandamus commanding the respondents to conceal/rescind/withdraw the Quarry Permit licence issued in favour of M/s K. Narayan & Co. or in the name of the petitioner with further declaration that the said lands in questions are vested lands. The said writ petition was heard analogously. Suffice it to note that there were other proceedings initiated at the instance of the parties in different courts. On 7th September, 2007 the private respondent filed an application under Order 40 Rule 1 of the Cr.P.C for appointment of receiver. The said application was also rejected by the trial court. Thus, having failed in every attempt to harass and to interfere with the running of the business by the petitioner of the said brick field, respondents No.5 and 6 filed an application before the DL and LRO, Hooghly alleging, inter alia, that the private respondents are co-sharers in respect of the brick field. The petitioner was asked to amicably make partition of their joint property and to submit the accounts of the brick field, but the petitioner failed to make partition of the joint property amicably and to also give accounts of the brick field. The DL and LRO, Hooghly by a letter dated

25th January, 2008 directed the petitioner and his mother to appear before him on 29th January, 2008 with all papers for disposal of the said application filed by the private respondents. The petitioner and his mother produced relevant documents on 29th January, 2008 as directed. Subsequently, on 8th February, 2008 the petitioner again appeared before the respondent No.2 and submitted a written objection on behalf of the petitioner and his mother. In the written objection it was specifically stated by the petitioner that he is the absolute owner of the brick field and filed necessary documents in support of his claim. Subsequently, the impugned order was passed by DL and LRO restraining the respondents from carrying on any manufacturing work of the brick field.

7. The private respondents have filed an affidavit-in-opposition controverting entire allegation made out by the petitioner in the instant writ petition. It is specifically averted by the contesting private respondents that one Ramayan Singh, son of Ganesh Singh was the direct tenant in respect of the subject land with effect from 10th April, 1956. Absolute ownership of Ramayan Singh has been recognized in Second Appeal No.139 of 1959 by this Court. The father of the petitioner and the contesting private respondents, namely Kamtaprasad Singh filed a partition suit being Title Suit No.74 of 1970 in which preliminary decree was passed by the learned Assistant District Judge, 2nd Court at Hooghly on 8th June, 1972 and 14th June, 1972 declaring the shares between the parties. However, the joint property was not partitioned by metes and bounds by a decree in final form in the said suit. Therefore, the

respondents filed Title Suit No.11 of 2007 for effecting partition of plot Nos.812, 813 and 814 of Mouza Baidyabati, wherein the petitioner used to run his brick field illegally. In the land record the said plots of land bearing No.812, 813 and 814 are still in the name of Ramayan Singh. The petitioner made an application before the BL and LRO on 24th August, 2006 for correction of name in the record of rights in respect of the plots of land over which he was running brick field but the land record has not been corrected. The BL and LRO, Srirampur has submitted an affidavit-in-opposition, stating, inter alia, that the petitioner is the owner of the brick field under the name and style of M/s K. Narayan & Co. However the said plots in question were recorded in the name of Ramayan Singh son of Ganesh Singh. It is also stated on behalf of the respondents that initially the business of manufacturing bricks was jointly conducted by the co-sharers but subsequently the petitioner was running the business till 2008. On the basis of a complaint filed by the private respondents the District Land and Land Reforms Officer called both the parties to produce documents in relation to ownership of their land but the petitioner failed to produce clear and uncontroverted documents with regard to the ownership of the plots.

8. This Court heard the learned Advocates on behalf of the petitioner as well as the respondents. The petitioner has prayed for issuance of a writ in the nature of mandamus commanding the state respondents, their agents and servants-

- i) To act and produce in accordance with law.

- ii) To issue an order cancelling or setting aside the letter dated 19th March, 2008 issued by the respondent No.2.
- iii) To forbear the respondents from interfering with the business of the petitioner.

The petitioner has also prayed for issuance of a writ in the nature of certiorari and other incidental reliefs.

9. The issue involved in the instant writ petition is as to whether the petitioner is the absolute owner of the brick field in question or not. Secondly, whether the private respondents No.5 and 6 have any right, title and interest over plot Nos.812, 813 and 814 of Mouza Baidyabati where the brick field was running and thirdly, whether the writ petition is maintainable for deciding the disputed question of fact.

10. It is no longer *res integra* that disputed question of fact cannot be decided in a writ petition.

11. It is needless to say that every action of State or its instrumentality, which is illegal, in contravention of the prescribed procedure, unreasonable, irrational or malafide is open to judicial review. Every executive or administrative action of the State or other statutory or public bodies, "legally treated to be authority", which is violative of fundamental rights or any statute, is open to judicial review. However, a disputed question of fact relating to ownership of particular plot of land, a private dispute between two persons relating to violation of contractual agreement, or the terms of contract by one party do not come under the scope of judicial review.

12. In the instant case, the bone of contention between the parties is as to whether the land on which the brick field was in operation is the individual land of the petitioner or a joint family property owned by both the petitioner and respondents No. 5 and 6. The said dispute is going on since 1972. Suits for partition are pending between the parties. The ownership of the parties in respect of the subject land shall be decided by the Civil Court and not by the Writ Court.

13. Therefore, this Court is of the view that the instant writ petition is devoid of any merit and the petitioner is not entitled to get any relief in the instant writ petition.

14. Accordingly, the instant writ petition is dismissed on contest, however, there shall be no order as to cost.

(Bibek Chaudhuri, J.)