

23.06.2023

CO 1863 of 2019

**Dinesh Bhowmick
Vs.
Collector, Purba Medinipur & Ors.**

Mr. Suprabhat Bhattacharyya
Mr. Kanailal Samanta

... .. for the petitioner

Affidavit-in-reply filed by the petitioner is taken on record.

In spite of service the opposite parties are not represented.

Challenging the order No.28 dated 22.04.2019 passed by the learned Civil Judge (Junior Division), 1st Court, Tamluk, Purba Medinipur in Title Suit No.222 of 2017 the present application under Article 227 of the Constitution of India has been preferred.

The subject matter of the present petition is that the petitioner filed the aforesaid suit for declaration of title of the land mentioned in the schedule to the plaint and for permanent injunction not to demolish the building standing on the schedule to the plaint.

The petitioner has stated in the plaint that as per record of rights there is 52 decimals of land being Plot No.398 of Mouza-Salgachhia under Khatian No.375, District – Purba Medinipur but on measurement the said land stands as 54 decimals and the said land was originally recorded in the name of Mahandra Metia in the Revisional Settlement.

The petitioner's further case is that out of the said land, 50 decimals of land was acquired by the Government for the purpose of Haldia-Mechada Road under L.R. Case No.87/64-65 and the rest portion of land was possessed by said Mahandra Metia and the same was recorded in his name under Khatian No.230.

The petitioner purchased 2 ½ decimals of land from legal heirs of Late Mahendra Metia by a Sale Deed dated 11.11.1999 and the purchase deed is annexed with a map. Thereafter, the petitioner recorded his name in the L.R. Settlement and the opposite party no.4 has converted the said land from '*Jal*' to '*Bastu*'. Thereafter, the building plan was sanctioned by the Tamralipta Municipality and three storied building has been constructed thereon. The petitioner is also paying rent to the Government.

Now, the opposite party no.3 issued a notice dated 18.08.2017 requesting the petitioner to remove the structure from Plot No.531 and 533 and being aggrieved the plaintiff filed the aforesaid suit.

The opposite parties are contesting the said suit by filing the written statement. The petitioner filed an application on 30th April, 2018 for production of documents as per statements made in paragraph 21 of written statement by the opposite party nos.1 to 3 which includes settlement map in connection with Plot No.531

and 533, Measurement sheet/map as per Case No.9 of 2017 and acquisition map.

The petitioner also filed an application for interrogatories and the schedule for the interrogatories was in connection with the left out necessary parties in the suit, settlement map and acquisition map on the basis of which the measurement was made in connection with the Case No.9 of 2017.

Subsequently, the opposite parties on behalf of the State of West Bengal filed an application on 26.11.2018 stating therein that it is not possible for them to submit the documents mentioned in the schedule of the application of the petitioner except the address of the person and authority concerned. The said application dated 26.11.2018 was rejected by the learned Civil Judge on 17.12.2018.

The petitioner filed further application on 17.12.2018 asking the defendants to answer the interrogatories.

The opposite party nos.1 to 3 filed an application on 18.02.2019 stating that they have no other documents in their possession except the documents filed on 26.11.2018 and prayed from exemption to produce any further documents.

On the contrary, the opposite parties filed an application on 18.02.2019 asking the plaintiff for submitting original settlement map, authenticated copy

of the acquisition map in connection with L.A. Case No.87/64-65 and the original settlement map and the opposite parties also filed an application for answer the interrogatories on certain points, namely :-

“1. To give answer in what map plot no.398 has been drawn to the extent of 54 decimals instead of 52 decimals.

2. Will you able to say the year of acquisition in connection with L.A. Case No.87/64-65.

3. You have stated settlement map in the last line of para 5 of the plaint, kindly answer the year of settlement map.”

The opposite parties answered the said interrogatories stating that the documents which were asked to file by way of interrogatories are lying in the custody of the Government department and paragraph 4 of the plaint refers to L.A. Case No.87/64-65 and not acquisition map and that the settlement map is in the custody of concerned department. In fact according to petitioner all the documents as mentioned in the schedule of the application are lying in the concerned office of the department and as such said application itself was not maintainable.

However, by the impugned order learned Court below had taken up the petition dated 18.02.2019 filed by the defendants for hearing and after considering the same the Court below finds that there is no impediment

to allow both the documents for production and further interrogatories put in petition dated 18.02.2019 filed by the defendants. Accordingly, Court below allowed the petition dated 18.02.2019. However, the Court below debarred plaintiff from filing the documents mentioned in the petition dated 18.02.2019 in future in this case.

This part of the order debarring the plaintiff from filing the documents mentioned in the petition in future in the said case appears to be arbitrary and without any basis. The Court concerned has not cited any reasons as to why the plaintiff is debarred from filing the said documents if it is available to him in future.

In view of the same, I do not find any cogent reason to deprive the plaintiff from agitating his case by filing those documents in future if it is available to him. If plaintiff fails to file document in support of his case made out in the plaint, plaintiff will face the consequence but it is against cause of advancement of justice and amounts to confinement of justice, if plaintiff is debarred from relying those documents in future, specially when opposite parties have not explained as to why the public documents which are supposed to be preserved in Government custody, are not available to the opposite parties.

Accordingly, the order impugned No. 28 dated 22.04.2019 is hereby set aside.

The Court below is requested to make expeditious hearing of the suit and to dispose of the entire proceeding on the basis of available documents and evidence, if any, preferably within a period of one year from the date of communication of the order.

Accordingly, C.O. 1863 of 2019 is disposed of.

(Ajoy Kumar Mukherjee, J.)