

WPA 10598 of 2018

Bipul Kumar Banerjee & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Asit Kumar Bhattacharyya,
Mr. Subrata Ghosh,
Mr. Biswarup Biswas.
... for the petitioners

The writ petitioners are represented on call whereas no one is appearing for the respondents, in spite of service of notice and due receipt of the same. It is also evident from record that in spite of Court's order directing the respondents to file affidavit-in-opposition, no such affidavit is still filed. Hence, the matter is taken up for hearing and disposal.

The petitioners claim themselves to be the owners of the concerned land, comprised within R.S. Dag No. 612, R.S. Khatian No. 551, J.L. No. 165, Mouza – Khantura, 24 parganas – Amirpur, Block – Habra-I, Sub – Division – Barasat, District North 24 Parganas. By dint of a decree of the Civil Court dated 17th December, 1999, the suit filed by the present petitioners before the Civil Court was allowed and decreed in their favour with the further direction that the defendants therein be restrained by way of a permanent injunction, from taking possession of the property forcibly and from setting the same to any third party unlawfully.

According to the petitioners, the verdict of the Civil Court as above is unchallenged. Hence, no proceeding under Section 54B (2) of the West Bengal Estate Acquisition Act, 1953 can be maintained against them. The petitioners are also aggrieved by the forcible alleged encroachment of the concerned property by the respondent Gobardanga Municipality by installing their hoarding of the Municipality over there.

A report has been submitted earlier in Court in the form of an affidavit by the respondent no. 7/ Block Land and Land Reforms Officer, Habra – 1, District North 24 Parganas.

In the said report a letter dated July, 30, 2018 is enclosed to specify the land, to be as follows:-

“Land Schedule:

Mouza- Khantura, J.L. No-165

L.R. Plot No. 612

L.R. Kh No.-1

Classification- Danga

Area of land-0.36 Acre”.

It has been contended that as the plot is recorded in Khatian No. 1, the same implies that State is the recorded owner with respect to the same. The present petitioners are only encroachers as regards the same by constructing a boundary wall thereon.

According to the petitioners, the said report is only misconceived in so far as, sufficiently prior to the same, the Civil Court has declared the right, title

and interest of the petitioners as regards the property in question. The decree of the Civil Court has become final and binding upon the parties.

Two judgments are relied on behalf of the petitioners as follows:-

- i. **Niranjana Chatterjee & Ors. vs. State of West Bengal & Ors.***
reported at **2007 (4) ICC.**
- ii. **Heirs Ashok Kumar Mathur vs. State of West Bengal*** reported at
2013 (3) CHN (CAL) 561.

By referring those two judgments, the petitioners have relied on the proposition made therein that in view of a decree of the Civil Court declaring title of a person with respect to a piece of property, any proceeding under Section 57 B (2) of the West Bengal Estate Acquisition Act, 1953 would not be maintainable as regards the same.

Mr. Bhattacharyya, learned counsel appearing for the petitioners has also pointed out to the fact that after the Civil Court's decree the petitioners have duly applied for correction in the record of the rights, in terms of the said decree.

The record as well as submissions made on behalf of the petitioners have been taken into consideration. Also the report submitted by the respondents in the form of an affidavit is considered.

It appears that the Civil Court's decree dated 17th December, 1999 has declared petitioners rights and title as regards the concerned property. The

said decree of Civil Court is now final and binding, not being challenged by any of the concerned parties.

Under such circumstances, the ratio of the judgments as above, squarely apply in the case of the petitioners, whose right and title as regards the concerned property is declared by a competent Civil Court.

Under such circumstances, the writ petition is legible to be allowed.

The writ petitioners being the owners of the concerned property, pursuant to the decree of the Civil Court, the respondent/s herein are directed not to encumber their right, title, interest and peaceful possession over the same, in any manner whatsoever.

With the directions as above, the writ petition is disposed of.

All pending applications, if any, are consequently disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Rai Chattopadhyay, J.)