

04.10.2023
Item No.18.
Court No.6.
AB

**M.A.T. 1042 of 2023
With
I A CAN 1 of 2023**

**Kalipada Ray & Others
Vs
Feedatives Pharma Pvt. Ltd. & Others**

Mr. Manjit Singh,
Mr. Gaganjyot Singh,
Mr. Biswajit Mal,
Mr. Abhishek Bagal ...for the Appellants.

Mr. Priyankar Saha,
Mr. Rudrajit Sarkar ...for the State.

Mr. Abhrajit Mitra, Sr. Adv,
Ms. Rajshree Kajaria,
Ms. Manju Bhutaria,
Mr. Uttam Sharma
Ms. Arundhati Barman Roy
.....for the Respondents/
Writ Petitioners.

By consent of the parties, the appeal and the connected application are taken up for hearing together.

A judgment and order dated May 19, 2023, whereby the writ petition of the respondent nos.1 to 3 herein being WPA 12463 of 2023 was disposed of by a learned Single Judge of this Court, is under challenge in this appeal at the instance of the private respondents in the writ petition.

The present writ petitioners acquired ownership of a poultry farm on the basis of a proceeding under the Insolvency and Bankruptcy Code, 2016. The

present appellants made a representation to the concerned Panchayet alleging that the poultry farm had encroached on a public road, which the villagers had been using for several years. Alleging inaction on the part of the Panchayet, the present appellants approached a learned Single Judge of this Court by filing WPA 11141 of 2021. That writ petition was disposed of by a judgment and order dated July 19, 2021. The operative portion of that order reads as follows:

“The writ petition is disposed of with a direction upon the competent authority of Chhandar Gram Panchayat to dispose of the representation (Annexure P5) filed by the petitioners dated January 18, 2021 in accordance with law upon hearing the petitioners as also the respondent no.5. The panchayat authority shall be entitled to call for the Mouza map and the records from the office of the Block Land and Land Reforms Officer to ascertain the ownership of the road in question. The representation shall be disposed of and a reasoned order shall be passed and communicated to all concerned within a period of twelve weeks from date of communication of this order. All the allegations made in the representation except those with regard to alleged pollution, shall be considered and dealt with in accordance with law. The office of the Block Land and Land Reforms Officer shall provide assistance to the panchayat authorities, if called for, in order to demarcate the road.”

The Pradhan of the concerned Gram Panchayet passed an order dated May 8, 2023, pursuant to the order passed on the earlier writ petition. The said order reads as follows:

“Pursuant to the order dated 02nd May, 2023, of the Hon’ble High Court at Calcutta, the hearing took place in presence of the representatives of Chhandar Gram

Panchayat, the First Party, Swarup Roy and Others and the Second Party, Feedative Pharma Private Limited and representatives, with regard to the road in the name of the Chhandar Gram Panchayat and upon hearing both the parties in this regard as also the representatives of the office of the BLRO and according to their advice, it has been decided that the aforesaid road should be made open for the use of the common public. In these circumstances you are requested to open this road within 15 days from the date of receipt of this order for the use of the common people.”

Challenging the aforesaid order of the Gram Panchayet, the present writ petitioners, who are the private respondents in this appeal, approached the learned Single Judge in the present round of litigation.

Before the learned Single Judge, it was contended on behalf of the writ petitioners that an arrangement had been made between the erstwhile management of the Company and the villagers and the Panchayet Authorities that in exchange of the internal village road, which ran through the property of the writ petitioners, another portion of the land of the Company owning the poultry farm would be allotted to the Gram Panchayet. Such land was on the periphery of the Company's property. Such arrangement was given effect to and the Company handed over approximately 90 decimals of land to the Gram Panchayet for construction of the road.

Learned Advocate for the present appellants disputed the contentions advanced on behalf of the writ petitioners and submitted that the Record of

Rights would indicate that the concerned road had been recorded as a 'rasta' and was continuously used by the villagers till the writ petitioners blocked the same. Hence, the earlier writ petition was filed by them for a direction on the Panchayet Authorities to exercise jurisdiction under Section 25 of the West Bengal Panchayet Act, 1973, for removal of such blockade /encroachment.

The learned Judge also noted the contention of the present appellants that prior to the present writ petition being filed, a contempt application had been filed by the present appellants being WPCRC 60 of 2023. On such application, two orders dated April 27, 2023 and May 11, 2023, were passed directing the Panchayet Authorities to remove the blockade put up by the present writ petitioners. In that factual background, the order of the Gram Panchayet could not be challenged any further before any forum.

The learned Judge rejected such contention of the present appellants holding that the order passed by the Pradhan may have been in compliance of order passed in the earlier writ petition or the contempt application, but the correctness of the order could always be challenged by an aggrieved party in a proper proceeding.

The learned Judge went on to hold that from the order impugned in the present writ petition, it does not appear that the exercise, as was directed by the order

passed in the earlier writ petition, has been carried out by the Panchayet Authorities. Her Ladyship further recorded that the writ petitioners had filed a written representation making out a specific case of a settlement with the Panchayet Authorities and the villagers, but there is no discussion on such representation in the impugned order of the Panchayet Authorities. The learned Judge also noted that the order was passed by the Pradhan on the basis of advice received from the concerned Block Land and Land Reforms Officer and not by applying his own mind. The learned Judge rightly observed that factual disputes are involved which cannot be conveniently adjudicated by the Writ Court. The learned Judge set aside the order impugned in the writ petition on the grounds that the same is unreasoned, it suffers from non application of mind, it does not discuss material points, the Panchayet Authorities did not mention the position of the land in the LR records or in the mouza map and the decision does not indicate whether the concerned road belonged to the Gram Panchayet and had been demarcated and recorded as village road. The learned Judge disposed of the writ petition with the following directions:

“Under such circumstances, the panchayat authorities shall revisit the issue upon granting an opportunity of hearing to the petitioners, the respondent nos. 6 to 9, to other villagers and authorities who may be aware of the actual state of affairs.

It is also made clear that all the factual aspects should be considered.

Before any decision is taken, an inspection of the entire site including the alternative route shall be made in the presence of the parties, the Block Land & Land Reforms Officer and the Block Development Officer.

A report of such inspection shall be handed over to the parties. The parties shall be allowed to respond to such report. Thereafter, a decision shall be taken and implemented.

A reasoned order shall be passed and communicated to all concerned. The court has not gone into the merits of the claims and counter claims.

The entire exercise shall be completed within a period of two months from the date of communication of this order.”

Mr. Singh, learned Counsel appearing for the appellants, argued that there cannot be any settlement regarding a public road. No private party can encroach upon a public path and say that instead thereof, some other land is being made available for constructing public path. The members of the public have right to use each and every square inch of a public property. In the present case, there could not have been any alleged settlement between the writ petitioners, the Panchayet Authorities and the villagers as the same is contrary to law. In this connection, Mr. Singh relied on three decisions, which are as follows:

1967 SCC Online AP 91 – Movva Butchamma Vs Movva Venkateswararao & Anr.

(2011) 11 SCC 396 – Jagpal Singh & Ors. Vs State of Punjab & Ors.

1988(2) (HC) 470 Andhra Pradesh Law Journal –
 Sataraboyina Someswara Rao & Ors. Vs Sangasetti
 Tirupathamma

Since we are not inclined to go into the merits of the case, we have noted the submission of Mr. Singh but do not deem it necessary to dilate on the same. The appellants will be at liberty to agitate such points before any other appropriate forum including the Panchayet Authorities.

We do not find any apparent infirmity in the order under appeal. The learned Judge, in our view, has rightly concluded that the exercise that the Panchayet Authorities were directed to carry out by the order passed in the earlier writ petition, has not been so done. The order passed by the Pradhan of the concerned Panchayet, which was assailed before the learned Single Judge, is a cryptic and unreasoned order reflecting total non-application of mind. The order is based on alleged advice received from the concerned Block Land and Land Reforms Officer. It cannot be said that the said order was passed in compliance of the order passed in the earlier writ petition. The learned Judge rightly set aside the order. The learned Judge also rightly held that disputed questions of fact exist, which the Writ Court is not well equipped to adjudicate upon. Accordingly, the learned Judge remanded the matter to the Panchayet Authorities with certain specific directions.

Further, Mr. Mitra, learned Senior Counsel appearing for the respondents/writ petitioners pointed out that pursuant to the order of the learned Single Judge, notice of inspection was issued to both the parties. Inspection was held. The present appellants participated in such inspection. Pursuant to such inspection, a report has been prepared by the Office of the Revenue Inspector, Chhandar, Bankura. Copies of such report have been handed over to us. Let the same be kept with the records.

Mr. Singh, learned Advocate for the appellants says that he is taken by complete surprise as his client never informed him about such inspection or report. We appreciate Mr. Singh's predicament. However, we do not appreciate the conduct of the appellants. They ought to have brought on record the subsequent developments. Every litigant has a duty to make full and frank disclosure to the Court of Law. Any kind of suppression or concealment of a material fact would disentitle a litigant to any relief particularly from a Court of Equity. Be that as it may, we do not find any reason to interfere with the order under appeal.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

MAT 1042 of 2023 stands dismissed along with
IA CAN 1 of 2023.

Urgent photostat certified copy of this order, if
applied for, be supplied expeditiously after compliance
with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)