

08.09.2023
Item No.2
gd/ssd

WPA/12822/2015
ABHAY ROY & ORS.
VS
STATE OF WEST BENGAL & ORS.

Mr. Sanat Kumar Roy,
Mr. Baidurya Ghosal,
Mr. Abhishek Banerjee
..for the Petitioners.

Mr. Rajarshi Basu,
Mr. K.M. Hossain
..for the State.

Mr. Balai Chandra Sahoo,
Mr. Tapan Kumar Roy
..for the private respondent nos.8 and 9.

The writ petitioners have prayed for a writ of mandamus to set aside the order dated April 10, 2015 passed by the Chairman of the Burdwan Municipality.

Petitioners claim to be the adjacent land owners and have alleged that the private respondent nos.8 and 9 have raised a construction by illegally filling up a water body. The petitioners allege that LR Dag No.2075 was recorded in the record of rights as 'Doba' and the private respondents have raised a construction thereupon by illegally filling up the same.

Mr. Roy, learned Advocate representing the writ petitioners submits that the private respondents have obtained a sanctioned plan by relying upon a conversion certificate issued by the Sub-Divisional

Land and Land Reforms Officer (for short SDL&LRO) on January 28th, 2009. By referring to Section 4C of the West Bengal Land Reforms Act (for short WBLR Act) Mr. Roy submits that the SDL&LRO was not vested with the authority to issue a conversion certificate. Thus, according to Mr. Roy, the certificates of conversion dated January 28, 2009 are nullity. Mr. Roy, therefore, submits that since the conversion certificate is nonest in the eye of law and once upon a time the plot being LR Dag No.2075 was a “Doba”, the sanction obtained by the private respondents from the municipality is liable to be cancelled and/or revoked by this Court.

Mr. Basu, learned Advocate representing the State submits that pursuant to an application filed by the private respondents on March 6, 2008, the competent authority under the WBLR Act issued the conversion certificates dated January 28, 2009. By referring to Section 2 sub-section (4) of the WBLR Act, Mr. Basu seeks to justify the action of the SDL&LRO in issuing such conversion certificate.

Mr. Sahoo, learned Advocate representing the private respondent nos.8 and 9 submits that the main objection of the writ petitioners was that the plan was sanctioned by the municipality even though there was no recorded passage of the proposed site. He further submits that the writ petitioners have

approached this Court at a belated stage as the conversion certificates were issued sometimes in January, 2009 and the plan was sanctioned in July, 2013 and the petitioners have filed this writ petition only in the year 2015.

Heard the learned Advocates for the parties and perused the materials placed.

From the reliefs claimed in the writ petition it appears that the petitioners have prayed for setting aside the order dated April 10, 2015 passed by the Chairman of the Burdwan Municipality and have also prayed for direction upon such authority to cancel/withdraw the plan sanctioned vide memo dated July 16, 2013. It does not appear from the writ petition that the conversion certificates issued by the SDL&LRO has been challenged. No relief has also been claimed in respect of the conversion certificates. In so far as the contention of Mr. Roy that the SDL&LRO was not authorized to issue the conversion certificate under the provisions of Section 4(C) of the WBLR Act, it would be relevant to take note of the provisions laid down in Section 2 sub-section (4) of the said Act wherein the "Collector" has been defined to mean the Collector of a District or any other officer appointed by the State Government to discharge any of the functions of a Collector under this Act. In the absence of any specific pleadings in the writ petition

in support of the contention that the SDL&LRO was not authorized to issue conversion certificate, this Court, merely on the basis of submissions advanced at the Bar, cannot proceed to decide as to whether the SDL&LRO was competent to issue the conversion certificates under the provisions of the WBLR Act.

That apart the conversion certificates were issued by an authority under the provisions of the WBLR Act which is a specified Act under Section 2(r) of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997. The jurisdiction of this Court under Article 226 of the Constitution of India with regard to challenge thrown to an order passed by an authority under the specified Act stands excluded in view of the provisions laid down under Section 8 of the West Bengal Land Reforms and Tenancy Tribunal Act. This Court is, therefore, not inclined to entertain a challenge against the conversion certificates issued by the authorities under the WBLR Act.

It appears from the record that pursuant to an application of the private respondents dated March 6, 2008 the conversion certificates dated 28th January, 2009 were issued after obtaining a “No Objection Certificate” for change of classification from the Assistant Director of Fisheries. It appears from the “No Objection Certificate” issued by the

Assistant Director of Fisheries on September 8, 2008 that the plot in question is surrounded by permanent structures and community roads (or by-roads). It was further recorded therein that by natural course the land-piece has become solid land mass long ago that is more than 20 years ago. Since the authorities under WBLR Act have granted permission for conversion and certificates to such effect has been issued in favour of private respondents, it cannot be said that sanction of plan could not have been granted by the Municipality for construction on the said plot.

In *State of West Bengal & Others v. Sanjeevani Projects (P) Ltd. & Others* reported at 2006 (1) CHN 241 cited by Mr. Roy the prayer of the applicant for conversion of land stood rejected. In the said reported case, the land which was used for pisciculture was illegally filled up without obtaining permission for conversion. The said decision being distinguishable of facts has no manner of application to the case on hand.

After going through the order dated April 10, 2015, this Court finds that the authorities of the Burdwan Municipality have assigned cogent reasons for rejecting the prayer of the writ petitioners for cancellation/revocation of the sanctioned plan.

For all the aforesaid reasons, this Court is not inclined to grant any relief in favour of the writ petitioners.

The writ petition accordingly stands dismissed.

There shall be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)