

AD-20&21
Ct No.09
27.06.2023
TN

WPA No. 15859 of 2022
IA No: CAN 1 of 2022

Haripada Biswas and others
Vs.
The State of West Bengal and others

With

WPA No. 13204 of 2022

Arindam Nandy Chowdhuary
Vs.
The State of West Bengal and others

Mr. Asim Hati,
Ms. Nandini Sharma

.... for the petitioners in
WPA 15859 of 2022 and
respondent no. 18 in
WPA 13204 of 2022

Mr. Dhrubojyoti Ghosh,
Mr. Somnath Maiti

.... for the proposed added respondent in
CAN 1 of 2022 and petitioner in
WPA 13204 of 2022

Mr. Rajarshi Basu,
Mr. K.M. Hossain

.... for the State in
WPA 15859 of 2022

Two writ petitions, incidentally touching each other on certain aspects, are being taken up for hearing together.

In WPA 13204 of 2022, the petitioner contends that the writ petitioners in the other writ petition, that is, WPA 15859 of 2022 have illegally got the property

transferred in his favour by a few of the co-owners of the property-in-question, which is a 'haat'. It is submitted that not only did the purported sale not pass any title in the property, the same was allegedly effected through a power of attorney, which is also not valid in law. It is, thus, submitted that there was no transfer of title at all by virtue of the sale deed.

Learned counsel for the petitioner in WPA 13204 of 2022 further argues that by an order dated May 17, 2006 passed in MAT No. 1414 of 2005 by a Division Bench of this court, it was categorically directed that, having regard to the complexity of the questions arising before the said court, the concerned BDO, Gazole in the District of Malda was to control and run the 'haat'-in-question along with the respondent no.2 therein. The BDO was also to maintain the accounts of profit and loss in respect of the earnings from the said 'haat' insofar as the share of the applicant therein was concerned. The Division Bench also directed the BDO to take over the management of the 'haat'-in-question immediately upon receipt of a copy of the said order.

It is further contended that in a subsequent judgment passed by the Division Bench presided over by the Hon'ble the Chief Justice of this Court in connection with a Public Interest Litigation, being

WPA (P) 263 of 2021, and a connected application, being IA No. CAN 1 of 2021, it was categorically observed that the property-in-question is a 'hat'.

Hence, it is argued by learned counsel for the petitioner in WPA 13204 of 2022 that the petitioners in the other writ petition do not have any *locus standi* to have the purported deed registered in their own name, since the same is not a valid instrument of transfer at all.

Learned counsel for the petitioner in WPA 13204 of 2022 also presses CAN 1 of 2022, whereby the said petitioner in WPA 13204 of 2022 seeks to be added as a party-respondent to WPA 15859 of 2022 on the grounds as indicated above.

In WPA 15859 of 2022, the gamut of dispute is that the petitioners therein allegedly have had a sale deed executed in their favour, which was sought to be registered and, for such purpose, presented to the registering authorities duly in accordance with law. However, subsequently, the Registrar concerned is refusing to return the registered deed on the frivolous ground that certain objections regarding such registration have been taken, apparently by the petitioner in WPA 13204 of 2022.

It is further submitted that the process of registration has actually been completed but the

registering authorities are withholding the registered document from the petitioner.

Learned counsel appearing for the respondent-authorities submits, by placing reliance on a written submission of Statement of facts handed over in court today, that after presentation of the deed-in-question, a spot inspection was conducted and it was found that the properties mentioned in each deed are located within the area of “Gazole Hat” and beside a metal road which was not mentioned in the presented documents. Accordingly, the parties have been told that proposed land use should be “Hat” instead of ‘danga’. It is alleged by the Registering Authority that the parties denied paying the deficit stamp duty and registration fees, for which the registration has not been completed.

Learned counsel appearing for the writ petitioners in WPA 15859 of 2022 submits that the said writ petitioners are agreeable to put in the deficit stamp duty and registration fees, as and when so intimated by the registering authorities. Hence, there cannot be any further impediment in withholding registration on such score.

However, insofar as CAN 1 of 2022 is concerned, the writ petitioner in WPA 13204 of 2022 is neither a necessary nor a proper party to the other writ petition,

that is, WPA 15859 of 2022, because the said proposed added parties do not have any connection with the outcome of the other writ petition. Whichever way the outcome of the WPA 15859 of 2022 goes, the same may only incidentally affect the proposed added parties, since mere registration, *per se*, does not create any title but is only a component of the entire chain of events comprising a transfer. In any event, it will be open to the proposed added parties, who are applicants in CAN 1 of 2022, to agitate their grievances regarding the sale deed allegedly executed in favour of the writ petitioners in WPA 15859 of 2022, on the ground that no title passed thereby as well as to agitate the rights of the proposed added parties, before a competent civil court.

However, such right does not entitle the proposed added parties to be impleaded in WPA 15859 of 2022 as respondents thereto.

Accordingly, IA No: CAN 1 of 2022 is dismissed on contest on the above grounds without any costs.

Insofar as WPA 15859 of 2022 is concerned, in the light of the above observations, the respondent no. 5 in WPA 15859 of 2022, that is, the District Sub-Registrar, Malda Registration Office, shall intimate the writ petitioners, within a week from date, as regards

the quantum of deficit stamp duty/registration fees to be put in by the petitioners to complete the registration of the documents-in-question. Upon such communication being made in writing to the petitioners, the petitioners shall comply with the same and, within three weeks from the date of compliance of such formalities by the petitioners, including deposit of the deficit amount, the respondents shall release the registered deed(s) upon completion of the registration, in favour of the writ petitioners.

Accordingly, WPA No. 15859 of 2022 is disposed of without any order as to costs.

Inssofar **as WPA 13204 of 2022 is concerned, the same is disposed** of with liberty to the petitioner therein and any other person concerned, including the persons who have executed the power of attorney in favour of the said writ petitioner, to agitate the petitioner's contention that no title has passed in favour of the petitioners in WPA 15859 of 2022 by virtue of the deeds sought to be registered by the said writ petitioners.

It is further clarified that the writ petitioner in WPA 13204 of 2022, namely, Arindam Nandy Chowdhary, will also be at liberty to challenge the irregularity in the conduct of the writ petitioners in WPA 15859 of 2022 as well as agitate grievances

regarding title to the property which is the subject-matter of the deeds-in-question before a competent civil court. If such a challenge is preferred, the said court and/or any other forum, before which such grievance is raised, shall decide the issues independently and in accordance with law, without being influenced in any manner by any of the observations made herein and/or the mere factum of registration of the sale deeds-in-question.

It is further made clear that mere registration of the documents in favour of the petitioners in WPA 15859 of 2022 shall not create any special right or equity in favour of the said writ petitioners, which the said writ petitioners do not otherwise have in law.

The instructions filed today on behalf of the District Sub-Registrar, Malda be kept on record.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)