

12.05.2023
Item No.9.
Court No.6.
AB

**F.M.A. 72 of 2022
With
I A CAN 2 of 2023**

**Smt. Jharna Jha (Thakur)
Vs
The State of West Bengal & Others**

Mr. B. N. Ray,
Ms. Shetparna Ray ...for the Appellant.

Mr. Ansar Mondal,
Ms. S. Bhattacharya ...for the State.

Mr. Saikat Chatterjee,
Ms. Salma Sultana Shah
.....for the Private Respondents.

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

A judgment and order dated April 8, 2021, whereby the appellant's writ petition being WPA 2705 of 2021 was disposed of by a learned Single Judge, is assailed in this appeal.

It appears that the land in question belonging to the appellant/writ petitioner vested in the State Government under the provisions of the West Bengal Estate Acquisition Act, 1953, sometime in the year 1968. Thereafter, pattas were granted by the Government in favour of various parties in respect of portions of the land in question.

It appears that the vesting was challenged by the appellant by filing a writ petition before this Court. By a judgment and order dated July 24, 1981, a learned Judge of this Court held that the initiation of proceedings for vesting and the order of vesting passed by the Assistant Settlement Officer were without jurisdiction. The vesting order was quashed.

Pursuant thereto, steps were taken for annulment of the pattas and for correction of the Record of Rights. The Record of Rights were corrected and the name of the appellant/writ petitioner was reinstated as the owner of the land in question. The pattas were also annulled. Learned Advocate for the private respondents says that such annulment is under challenge before the concerned District Land & Land Reforms Officer.

After annulment of the pattas and correction of the Record of Rights in favour of the appellant, the appellant approached the learned Single Judge by filing WPA 2705 of 2021, inter alia, with the following prayers:

- “a) *A writ in the nature of Mandamus commanding the Respondents to forthwith quash and set aside all the schemes namely Indira Awas Yojana (IAY), Prodhan Mantri Gramodyan Yajona-Gramin Awas (PMGY-GA) and any other schemes and Government Policies adopted concerning the petitioner forthwith;*
- b) *A writ in the nature of Mandamus commanding the Respondents to forthwith restore the actual physical possession of the concerned area in favour of the*

petitioner by removing and demolishing the constructional work so far made in the property;

- c) A writ in the nature of Mandamus commanding the Respondents not to include the property in question under any Scheme/Plans/Projects without adopting due process of law;*
- d) A writ in the nature of Mandamus commanding the respondents to pay the petitioner adequate compensation for use of such land.”*

In the meantime in the year 2017, a further proceeding was initiated by the Government under Section 44(2)(a) of the West Bengal Estate Acquisition Act. The appellant challenged such proceedings before the West Bengal Land Reforms & Tenancy Tribunal by filing O. A. Case No.1672 of 2017. There is an interim order in that matter directing the Government not to take any further action in the proceedings under Section 44(2)(a) of the 1953 Act, pending disposal of the original application.

The learned Judge noted the pendency of that application before the Tribunal and disposed of the writ petition with the following observations:

“From the submissions made on behalf of all the parties it appears that though initially patta was granted in respect of the land in question but thereafter the pattas took annulled. Proceedings have been initiated by the State authority for vesting of the land under the provisions of Section 44(2)(a) of the West Bengal Estate Acquisition Act.

The private respondents are in possession of the said plot of land for a considerable period of time on the basis of the pattas granted in their favour. As the proceeding for vesting the land is pending consideration before the learned Tribunal, accordingly, no direction can

be passed in the instant matter for demolition of the construction standing thereon or for removal of the occupants of the land in question at this stage. Passing an order in terms of the prayer made by the petitioner for removal of the construction when the proceeding for vesting the land in question is pending consideration, will not be in the interest of justice.

In the event the petitioner succeeds in the original application pending before the learned Land Reforms and Tenancy Tribunal then the petitioner will be entitled to take necessary steps pursuant to the order passed by the learned Land Reforms and Tenancy Tribunal in the pending application.”

Being aggrieved, the writ petitioner is before us by way of this appeal.

From the affidavit of service filed in Court today, we find that the concerned Panchayet and its Pradhan, being the respondent nos.8 and 9 herein, have been served, but nobody represents them.

Mr. Ray, learned Advocate for the appellant/writ petitioner says that the Panchayet is permitting certain constructions to be put up on the appellant's land under various Government schemes including setting up of Sishu Siksha Kendra and under the Pradhan Mantri Abas Yojana Scheme. Learned Advocate says that as of date, the land is recorded in the name of the appellant, who is, therefore, the legal owner. The Panchayet cannot permit other parties to utilize any portion of the appellant's land. It is possible that the State Government may acquire the land in accordance with law and permit the Panchayet to

utilize it for certain purposes. The appellant should be protected in that regard. No further encroachment should be made by the private respondents or anybody at the instance of the Panchayet on the land of the appellant.

We think that Mr. Ray, learned Advocate for the appellant has a point. As of date, the appellant is the lawful owner of the land in question. Neither the Panchayet nor anybody else can encroach on such land. Even the State Government cannot take over any portion of such land without following due process of law.

Accordingly, the respondent nos.8 and 9 are restrained from making any further encroachment on any portion of the appellant's land in question or making any further construction on any portion of such land whether under any scheme or otherwise.

Mr. Ray further says that the private respondents should also be restrained from making any further construction on the land of the appellant or from changing the nature and character thereof. Mr. Chatterjee, learned Advocate appearing for the private respondents, on instruction, says that the private respondents will not make any further construction nor will change the nature and character of the land in question.

We make it clear that this restraint order will be subject to the decision in the original application pending before the Tribunal. In the event the Tribunal allows the original application, meaning thereby, in the event, the present appellant succeeds before the Tribunal, this order passed above will naturally continue. However, in the event the appellant fails before the Tribunal and the Record of Rights are corrected, this order will stand vacated.

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

The order under appeal stands modified to the aforesaid extent.

FMA 72 of 2022 stands disposed of along with IA CAN 2 of 2023.

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

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)