

May 16, 2023
Sl. No.10
Court No.19
s.biswas

WPA 16322 of 2022

Basudeb Kundu
vs.
The State of West Bengal and others

Mr. Soumik Ganguli,
Mr. Supriya Shasmal

... for the petitioner

Mr. Tapan Kumar Mukherjee, Ld AGP
Ms. Sangeeta Roy

... for the State

Mr. Dilip Kr. Sinha

... for the respondent No.3

Mr. Mrinal Kanti Ghosh

... for the respondent Nos.4 & 5

The petitioner is aggrieved by the inaction on the part of Arrah Gram Panchayat in renewing the trade registration certificate. The Pradhan of the gram panchayat by a letter dated July 26, 2021, intimated the petitioner that plot no.459/1457 was not recorded in the name of the petitioner and as such the trade registration certificate could not be given to the petitioner.

The affidavit-in-opposition filed by the gram panchayat indicates clearly that the reason for not renewing the trade registration certificate was inability of the petitioner to demonstrate his right, title and interest in respect of the said plot either on the basis of a title deed or on the basis of the record of rights.

Mr. Sinha, learned advocate appearing for the Pradhan (respondent no.3), submits that initially the trade registration certificate was given to the

petitioner, but the gram panchayat has the right to cancel or revoke the same in future as also refuse to grant renewal. Thus, on the basis of such authority, the trade registration certificate was not renewed. The record of rights stood in the name of the respondent nos.4 and 5.

Mr. Sinha further submits that the dispute cropped up when the respondent no.4 repeatedly asked the gram panchayat not to renew the trade registration certificate in favour of the petitioner. The said respondent claimed title in respect of the property in question on the basis of a deed of gift executed by the mother, who was the original owner of the property sometime in 1982. The petitioner and the respondent Nos.4 and 5 are brothers.

The gram panchayat, upon hearing the parties realized that there was a dispute with regard to right, title and interest in respect of the property and hence, refrained from further renewing the trade registration certificate in view of such dispute.

Mr. Ghosh, learned advocate appearing for the petitioner, submits that the fact that the record of rights was in the name of Parameshwar Kundu (respondent no.4 herein), was not in dispute. The petitioner approached the Block Land and Land Reforms Officer for correction of the record of rights, but the said prayer was not entertained as the

authority was of the view that the dispute with regard to title, based on two deeds of gift, should be settled by a civil court. According to the authority, the decision as to which deed of gift would prevail, was beyond their jurisdiction.

Learned advocate for the petitioner also submits that the subsequent deed of gift issued by the mother in 1993, should have been taken into consideration and the possession of the petitioner could not be denied in respect of the property in question.

Learned advocate for the respondent nos.4 and 5, submits that the record of rights has a presumptive value with regard to possession. Hence, the petitioner's claim should have been accepted.

It is well-known that the record of rights have a presumptive value with regard to possession. Yet, the same cannot be treated as sacrosanct and is required to be corroborated by evidence.

The issue here is not whether the petitioner or the respondent nos.4 and 5 have title over the property in question.

Whether the panchayat authorities could deny renewal of the trade registration certificate in favour of the petitioner on the ground of a title dispute, is the issue.

The law is well-settled that when there is a dispute between the landlord and the tenant or when the title of the property is required to be gone into, the authorities, empowered by law to grant trade registration certificate, should not enter into such dispute as long as the person seeking renewal of trade registration certificate is in possession of the premises and meets other compliances. Consent of the landlord or record of title, should not be asked for in such cases and the person running the business should be given an opportunity to run the business until the person is evicted by due process of law.

In the matter of ***Tapan Kumar Das Vs. The State of West Bengal & Ors.*** decided in ***W.P. No. 34731 (W) of 2013***, the co-ordinate bench of this court held as follows:

“This Court, however, is of the view, that grant of a trade licence does not, in any manner, confer any kind of right or title or interest over the land whereupon a person would carry out his/her trade. A mere grant of trade licence provides only an extremely limited right to the licence holder to carry out trade – and that too – strictly in terms of the licence and nothing more.”

In this case, the property belonged to the mother of the contesting parties. Both the parties claim that the property was gifted to them by two separate deeds. In this case, only the fact whether the business was running from that place is to be seen. It appears that until 2020 the trade

registration certificate had been renewed by the panchayat and the business was running.

Thus, this writ petition is disposed of with direction upon the Block Development Officer, Chhatna Development Block, to cause a physical enquiry in order to ascertain whether the petitioner is still in possession of the property in question and was running a business therefrom till the registration expired. Such enquiry shall be made in the presence of the parties. A report shall be prepared within a period of two weeks from date and supplied to the parties as also to the gram panchayat. On the basis of such report, the panchayat authority will act and proceed in accordance with law within a period of two weeks thereafter.

If the report indicates that the petitioner is in possession of the property, necessary renewal shall be granted, provided the petitioner fulfils the other formalities and statutory compliances. However, the order of renewal of trade registration certificate shall not enure to the benefit of the petitioner in any proceeding before any court or tribunal. This trade registration certificate shall be strictly for the purpose of business, which the petitioner had been running from the place and shall not be used for any other purpose whatsoever. This order shall not be

treated as adjudication of any other right of the petitioner in respect of the property.

As the title is contentious, the requirement to submit the title deed or record of rights would not be necessary.

The petitioner is directed to implead the Block Development Officer, Chhatna Development Block, as a party respondent.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of server copy of this order.

(Shampa Sarkar, J.)