

DL-9

02.08.2023
Court No.5
(AD)

WPLRT 89 of 2023

**Raj Gupta & Anr.
Vs.
The State of West Bengal & Ors.**

*Mr. Shyamal Chakraborty
Mr. Debjyoti Mondal
Md. Mahmud
... for the petitioners.*

*Mr. Soumitra Bandyopadhyay
Ms. Suchana Banerjee
... for the State-respondents..*

The writ petition is directed against an order dated December 23, 2022 passed by the West Bengal Land Reforms and Tenancy Tribunal in O.A. No.644 of 2018.

Learned Advocate appearing for the writ petitioners submits that, the writ petitioners are the owners of an immovable property. Writ petitioners purchased the immovable property in 2008. He submits that, the names of the writ petitioners were mutated by the Collector, South 24-Paganas in respect of the property concerned. He refers to a writing dated August 29, 2011 in support of his contention.

Referring to an order dated January 3, 2018 passed in a proceeding under Section 5(3) of the West Bengal Thika Tenancy(Acquisition & Regulation) Act, 2001, he submits that, the original owner was not issued any notice under the Calcutta Thika and other Tenancies and Land (Acquisition and Regulation) Act, 1981. He submits that the State was

not being able to establish that the vendor of the petitioners was served with notice under the Act of 1981.

Learned Advocate for the petitioners refers to the title in respect of the immovable property including a deed of 1950. He submits that there were *pucca* structures standing on the immovable property concerned and, therefore, the immovable property could not be considered as a thika tenancy within the meaning of the Act of 1981. He submits that the so-called order passed by the Controller was without any jurisdiction. No vesting took place under the Act of 1981. Petitioners continue to remain as the owner of the property concerned. Tribunal erred in appreciating such facts and passed a wrong order which requires interference by the Writ Court.

State is represented.

By the impugned order dated December 23, 2022, the Tribunal found that the petitioners are purchaser of an immovable property. The original owner under whom the vesting took place did not challenge the vesting. Therefore, the petitioners did not acquire a better or higher authority than the original vendor and, therefore, there was no merit in the case of the petitioners.

We find from the records that, the proceedings under the Calcutta Thika and other Tenancies and Land (Acquisition and Regulation) Act, 1981 took place where the immovable property concerned was declared to be thika tenancy property. Consequent thereto, the ownership of the

land vested with the State. This was done by an order dated July 31, 2006 of the Thika Controller.

The writ petitioners are purchasers subsequent to the vesting taking place under the Act of 1981. The contention of the petitioners that the vendor of the petitioners was not served with notice of the 1981 proceedings is without any substance. The vendor of the petitioners is not before us to contend that the vendor did not receive any notice.

Proceedings under Section 5(3) of the West Bengal Thika Tenancy (Acquisition & Regulation) Act, 2001 were undertaken in respect of the property concerned. Such an attempt was found not to be maintainable since the vesting took place under the Act of 1981 and such vesting cannot be reopened under the Act of 2001. Appeal was carried from the order dated January 3, 2018 to the West Bengal Land Reforms and Tenancy Tribunal which resulted in the impugned order.

The contention that the land was appurtenant or at least there were *pucca* structures thereon, is of no consequence today since the 1981 vesting was never challenged by the vendor of the petitioners. The petitioners do not attend any higher or a better right than what the vendor of the petitioners possessed when the vendor sold the immovable property to the petitioners. The property was already vested with the State much prior to the date of transfer to the petitioners. Therefore, the vendor was without any right, title and interest in respect of the

immovable property to convey to the petitioners. Petitioners cannot initiate any proceedings on the basis of a sale deed, which does not vest the petitioners with any right, title and interest in respect of the immovable property concerned.

Mutation in records of the municipality *per se* does not create any right, title and interest in respect of an immovable property. At best, it is an acknowledgment of a person in possession or the liability to pay tax in respect of the immovable property concerned.

In such circumstances, we find no merit in the present writ petition.

WPLRT 89 of 2023 is dismissed without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

