

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak
And**

The Hon'ble Justice Md. Shabbar Rashidi

M.A.T. 1884 of 2023

With

CAN 1 of 2023

Biswajit Mondal

VS.

The State of West Bengal & Ors.

For the Appellant : Mr. Shamim Ul Bari
Mr. Md. Zeeshanuz Zaman

For the Respondent Nos. 7 & 8: Mr. Sabyasachi Mondal
Ms. Payel Khanra

For the Respondent Nos. 12 & 13: Mr. Sayan Mukherjee
Ms. Puja Naskar

For the State: Mr. Jahar Dutta
Mr. Parikshit Goswami

Heard on : 26.9.2023, 6.10.2023 & 19.12.2023

Judgment on : December 19, 2023

DEBANGSU BASAK, J.:-

1. The appeal is directed against an order dated September 18, 2023 passed in W.P.A. 12856 of 2023 by the learned Single Judge.
2. By the impugned order, the learned Single Judge was pleased to dismiss the writ petition as being not maintainable on the ground

that there were disputed questions of fact relating to title of an immovable property.

3. Learned advocate appearing for the appellant submits that, the appellant was the writ petitioner. He contends that there is no disputed question of title involved. He submits that, the private respondent constructed a clubhouse on two plots of land belonging to the State. In support of such contention, he relies upon the Record of Rights in respect of the two plots as well as the title documents being a Deed of Gift which, some of the private respondents executed in favour of the other private respondents. He draws the attention of the Court to the schedule to the Deed of Gift. He submits that, all the private respondents accepted, that the entire schedule property in the Deed of Gift belonged to the State of West Bengal. That apart, the Record of Rights also shows that, the land belonged to the State of West Bengal.
4. Learned Advocate appearing for the appellant draws the attention of the Court to the report submitted by the concerned Block Land & Land Reforms Officer dated October 3, 2023. He submits that, the two plots are involved being Dag No. 434 and Dag No. 439. Both the two plots are Khal (Canal). Both the plots are recorded in the Record of Rights as for public use.
5. Learned advocate appearing for the appellant submits that, the private respondents as a club encroached upon not only the canal, but also a portion of Public Works Directorate (PWD) Roads. With

regard to encroachment to the PWD Roads, a writ petition was filed. In such writ petition, there was a direction issued on the concerned authorities to initiate proceedings under the West Bengal Highways Act, 1964 if encroachment was found. The authorities did invoke the provisions of the Act, 1964. The encroachment on PWD roads was subsequently removed. He contends that despite the removal, there are further attempts by the same private respondents to re-encroach the road. He draws the attention of the Court to a letter of the PWD authorities requesting for registering an FIR against such private respondents with no steps being taken thereon.

6. State and the private respondents are represented.
7. Learned advocate appearing for the respondent nos. 12 to 13 submits that, his clients gifted the immovable property concerned to the respondent nos. 7 and 8 by a registered Deed of Gift. He refers to the Deed of Gift. He contends that his clients were the owners of a portion of plot nos. 434 and 439 and that his clients duly gifted such portions of their ownership in respect of those two plots in favour of the respondent nos. 7, 8 and others.
8. Learned advocate appearing for the respondent no. 7 and 8 submits that, an opportunity could be given to his clients to use an affidavit dealing with the report submitted by the concerned BL & LRO. He submits that, he was not given an opportunity to file any

affidavit before the learned Single Judge. Here, at least, he should be afforded to such an opportunity.

9. Referring to the report of the concerned BL & LRO, he submits that, the report submitted before the Division Bench speaks of two plots of land being a canal while the report submitted by the BL & LRO in the earlier round of litigation did not speak of the land being a canal. He submits that, his clients are in occupation of the land in question since 1960. He refers to the documents of registration of two clubs. He submits that, the respondent nos. 7 and 8 are office bearers of a club. The predecessor-in-interest of the present club was initially formed in 1960 and that the present club is the successor of the earlier club.
10. We considered the rival submissions of the parties and the documents made available. We perused the prayers made in the writ petition.
11. We find from the prayers made in the writ petition that the appellant as the writ petitioner wanted the respondent authorities to take appropriate steps to demolish the illegal structures made by the private respondents over the two plots of land, namely plot nos. 434 and 439.
12. The learned Single Judge by the impugned order dismissed the writ petition as not maintainable on the ground that there were disputed questions of facts relating to title to the immovable property concerned.

13. We perused the claims of title put forward by the respondent nos. 7 and 8 in one part as well as the respondent nos. 12 and 13 on the other part. We also perused the documents of the respondent nos. 7 and 8 that they produced in support of their claim of title in respect of the two plots of land concerned.
14. Primarily, the respondent nos. 7 and 8 claim to be in the possession from 1960 in respect of the two plots concerned through clubs registered under the West Bengal Societies Registration Act.
15. Overwhelming documentary evidence establish that the two plots are Khal (Canal). It is recorded to be so in the Record of Rights. The concerned BL & LRO says it to be so. None of the private respondents produced any document to establish that it was not a Canal.
16. Respondent nos. 7 and 8 are claiming ownership of a portion of the two plots on the basis of a registered Deed of Gift of 2023.
17. The registered Deed of Gift is a part of the Paper Book. The registered Deed of Gift contains a schedule. The schedule starts of with the words that the land comprised in the schedule is owned by the State of West Bengal. Thereafter such schedule proceeds to describe the so-called ownership of the respondent nos. 7 and 8 in respect of the plot nos. 434 and 439. It thereafter goes on to the claim that the respondent nos. 12 and 13 were gifting such portion of plot nos. 434 and 439 in favour of the respondent nos. 7 and 8.

18. While describing plot nos. 434 and 439 in the schedule of the Deed of Gift, both the respondent nos. 7 and 8 as well as the respondent nos. 12 and 13 acknowledged that those two plots were canals. It is specifically stated to be so in the Deed of Gift.
19. On the basis of such overwhelming documentary evidence namely registered Deed of Gift executed between the private parties in respect of the immovable property concerned where each of the private respondent, unconditionally and unequivocally stated that the land belonged to the State of West Bengal and that the plots concerned were canals, we are of the view that granting any further time to any of the private respondents to file any pleadings will be a wastage of time. Prayer for adjournment yesterday was granted. Such prayers are being made in order to delay the disposal of the appeal. Such prayer is for the collateral purpose of remaining in occupation by an immovable property belonging to the State illegally. Therefore, their prayer for filing any affidavit is rejected. In any event, we permitted such respondents to rely upon any document of their choice in support of their claim of right to occupy any part of portion of the two plots concerned.
20. The two Certificates of registration of the club require consideration. The two clubs apparently are registered under the West Bengal Societies Registration Act, 1961. One is the successor-in-interest of the other. These Registration Certificates are no documents of title in respect of the immovable property

concerned. None of the clubs set up any title in adverse possession as against the State of West Bengal. It is not their claim also.

21. In such circumstances, we set aside the impugned order of the learned Single Judge. We direct the respondent no.2 who is the District Magistrate of South 24-parganas to ensure that all appropriate steps for the purpose of removal of encroachment from the subject two plot nos. 434 and 439 are undertaken immediately on communication of this order to him. He is also directed to conclude the same preferably within a period of four weeks from the date of receipt of this order.
22. M.A.T. 1884 of 2023 and the connected application are disposed of accordingly without any order as to costs.

(Debangsu Basak, J.)

23. I agree.

(Md. Shabbar Rashidi, J.)