

**Form No. J(2).
Item No.5**

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 02.03.2023, 21.03.2023
& 23.03.2023

DELIVERED ON: 23.03.2023

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

W.P.A. 21361 of 2011

Apurba Kumara Saha & Ors.

VERSUS

The State of West Bengal & Ors.

Appearance:-

**Mr. Ashim Kr. Routh
Ms. Ananya Mondal**

.....for the petitioner

**Mr. Soumitra Bandyopadhyay
Mr. Aniruddha Sen**

.....for the State

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. The petitioners have challenged the order dated August 10, 2011 of the Deputy Director (Regularisation), Refugee

Relief & Rehabilitation Directorate, Kolkata-1 (for short 'R.R. & R Department') in this writ petition. By the said order, the writ petitioners were directed to submit a partition plan according to the effective possession in respect of Plot No. E.P. 59, Netaji Colony and to submit necessary documents to get the title deed.

2. Plot No. E.P. 59, Netaji Colony measuring an area of 0.3136 acres or equivalent to 1 kottah 14 Chittak 15 sq.ft. was originally occupied by one Pulin Behari Mukherjee. The said Pulin Behari Mukherjee transferred his possession in respect of the aforesaid plot in favour of one Sri Jasoda Kumar Saha, predecessor-in interest of the writ petitioners. The petitioners claim that they were initially occupying the said property along with their predecessor Jasoda Kumar Saha and after the death of Jasoda Kumar Saha, the petitioners are residing in the said plot.

3. The petitioners approached this Court by filing a writ petition being W.P. 19202(W) of 2008 alleging inaction of the respondent authorities to consider their representation dated June 23, 2008 and a coordinate Bench of this Court by an order dated November 6, 2008 directed the Deputy Director (Regularisation), Refugee Relief & Rehabilitation Directorate to dispose of such representation by a reasoned order.

4. Pursuant to the said order, the Deputy Director (Regularisation), Refugee Relief & Rehabilitation Directorate, R.R.& R Department passed the order dated August 10, 2011, which is the subject matter of challenge in this writ petition.

5. Mr. Routh, learned advocate appearing for the petitioners submits that in the records of the R.R.& R Department the name of Jasoda Kumar Saha was initially recorded in respect of E.P. 59 and the name of Narayan Chandra Saha was subsequently incorporated in the records. He submits that since the original occupier of the plot in question transferred his possession in favour of Jasoda Kumar Saha, the R.R.& R Department ought to have executed title deeds in favour of Jasoda Kumar Saha but the concerned respondent authority, by the impugned order, directed the petitioners to submit a partition plan to be executed in between the heirs of Jasoda Kumar Saha and the heir of Narayan Chandra Saha.

6. Mr. Bandyopadhyay, learned advocate representing the State draws the attention of the Court to the representation dated September 6, 2005 to indicate that Jasoda Kumar Saha allowed Narayan Chandra Saha to reside in a portion of the aforesaid plot. He, therefore, submits that since the plot in question is now under the occupation of the heirs of Jasoda Kumar Saha on one hand and the heir of Narayan Chandra Saha on

the other hand, no title deed in respect of the entire plot of land can be executed in favour of the writ petitioners, who claimed to be the heirs of Jasoda Kumar Saha.

7. Heard the learned advocates for the parties and perused the materials placed.

8. Pursuant to a direction passed by this Court, Mr. Bandyopadhyay, learned advocate representing the State produced the entire records in connection with the plot in question. On a perusal of the records, it appears that initially the name of Jasoda Kumar Saha was recorded against Plot No. E.P. 59 Netaji Colony and the name of Narayan Chandra Saha was subsequently recorded in the records against the said plot. However, the subsequent recording of the name of Naryan Chanda Saha in records of the R.R.& R Department against Plot No. E.P. 59 Netaji Colony appears to be on the basis of the undisputed factual position that Narayan Chandra Saha was also occupying a portion of the said plot of land.

9. On a query of the Court as to whether the plot can be physically demarcated so as to demarcate the respective area of occupation of the writ petitioners and the private respondent herein, Mr. Bandyopadhyay, on specific instructions received from the Deputy Director (Regularisation), Refugee Relief & Rehabilitation Directorate, R.R.& R Department as communicated to him through the Law Officer of the concerned

department, who is personally present in Court today submits that the plot in question can be physically demarcated by indicating the specific area of occupation of the respective parties. Mr. Bandyopadhyay however, prays four weeks time to carry out the work of physical demarcation.

10. However, none appears for the private respondent in spite of service.

11. Mr. Routh however, submits that the private respondent is not residing at the property at present and kept the property under lock and key. In view of such submission, this Court is of the considered view that it is not feasible for the writ petitioners to submit a partition plan in the facts of the instant case as directed in the impugned order.

12. Since the concerned authority says that the property can be physically demarcated on the basis of possession of the respective parties, this Court is of the view that the authorities should be directed to carry out the work of physical demarcation of the property in question within a specified time and to decide the issue as to what portion of the property can be allotted in favour of the writ petitioners.

13. For the reasons as aforesaid the order dated August 10, 2011 passed by the Deputy Director (Regularisation), R.R. & R,

Department stands set aside and this writ petition is disposed of by passing the following directions:

(i) The Sub-Divisional Officer, Barrackpore, Refugee Relief & Rehabilitation Directorate, R.R.& R Department being the 8th respondent herein to this writ petition shall depute a responsible officer of the department for the purpose of physical demarcation of the portions, which are under the possession of the writ petitioners and the private respondent herein upon giving advance notice to the respective parties. Such demarcation is to be completed and the copy of the sketch map showing such demarcation shall have to be supplied to the respective parties immediately thereafter. The entire exercise of demarcation and supply of the map is to be completed within a period of four weeks from the date of communication of this order.

(ii) After such demarcation is made, the 8th respondent herein shall decide the issue as to which portion of the plot, which can be allotted to the respective parties as per the relevant guidelines by passing a reasoned order within a period of four weeks from the date of such demarcation and to take all consequential steps thereupon. It is needless to mention that the 8th respondent shall afford an opportunity of personal hearing to the writ petitioners and the private

respondent or their authorised representative while deciding the said issue.

14. The original records produced by Mr. Bandyopadhyay, learned advocate for the State in Court today is returned to Mr. Bandyopadhyay.

15. There shall be no order as to costs.

16. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all usual formalities.

(HIRANMAY BHATTACHARYYA, J.)

Pallab, AR(Ct.)