

8.
03-05-2023
debajyoti
(Ct. no.06)

MAT 1979 of 2022
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IA NO:CAN/1/2023

Uttam Samanta
Vs.
The State of West Bengal & Ors.

Mr. Sukumar Ghosh,
Mrs. Moumita Ghosh

... For the Appellant.

Mr. Sk. Md. Galib,
Mr. Kapil Guha

... For the State.

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

A judgment and order dated November 16, 2022 whereby the appellant's writ petition being WPA 4375 of 2022 was disposed of without any effective relief being granted to him, is the subject matter of challenge in this appeal.

The appellant/writ petitioner was enlisted as a beneficiary under the Pradhan Mantri Awas Yojna (R). Such Scheme was to be implemented on a particular plot of land which the appellant claimed to have inherited from his father and of which he was the absolute owner. The first instalment of Rs.45,000/-, under the aforesaid Yojna, was released in favour of the appellant. Subsequently, the Pradhan of the concerned Panchayat by a letter dated April 05, 2019, directed the appellant not to start construction since it transpired that the land was not recorded in the name of the appellant. In the finally published Record of

Rights, the concerned land was found to be recorded in the name of one Bharat Maity and not in the name of the appellant's late father, Panchanan Samanta.

It appears that various proceedings are pending in respect of the concerned plot of land including mutation proceedings and other proceedings before the Land Reforms and Tenancy Tribunal.

The concerned Block Development Officer, who was the monitoring authority for implementing the Housing Scheme, after due enquiry, by an order dated August 13, 2019, directed the appellant to choose a different plot of land in respect of which he had title, for construction of a house under the aforesaid Scheme within four weeks from the date of the order; in default, the appellant was directed to refund the first instalment.

This order of the BDO was challenged by the appellant herein before a learned Single Judge of this Court by filing W.P. No.19945(W) of 2019. The writ petition was disposed of without interfering with the order of the BDO. The learned Single Judge recorded in her order dated February 04, 2021, that admittedly the writ petitioner is not the owner of the land in question. Until and unless he proves his ownership in respect of the land in question, the BDO is not entitled to release any money in his favour under the aforesaid Scheme. The learned Judge disposed of the writ petition by recording that the petitioner will be entitled to act in terms of the order passed by the BDO.

Such order was carried in appeal by way of FMA 696 of 2021. A coordinate Bench by a judgment and order dated December 07, 2021, did not interfere with

the order impugned and noted that there was no apparent infirmity in the order appealed against. However, it was submitted before the Division Bench on behalf of the present appellant that subsequent to the passing of the order by the learned Single Judge, the appellant had made a fresh representation dated March 10, 2021, to the BDO, and such representation should be disposed of by the BDO in accordance with law. The Division Bench disposed of that appeal observing as follows:-

“ Accordingly, we direct the respondent no.3, who, we are told, functions as the Block Development Officer, to consider the appellant's representation dated March 10, 2021, in accordance with law and take a reasoned decision thereon within a period of eight weeks from the date of receipt of a copy of this order after giving an opportunity of hearing to the appellant and other interested parties. The decision so take shall be communicated to the appellant within a week from the date of the decision.

We have not gone into the merits of the case. The respondent no.3 shall take an independent decision in accordance with law uninfluenced by his earlier decision. ”

Pursuant to the aforesaid order, the BDO passed an order dated January 27, 2022. Although the order is not happily worded, it is to the effect that since the land selected by the appellant/writ petitioner for construction of a house under the aforesaid Scheme is not recorded in the name of the appellant, under the applicable government rules, he is not entitled to any benefit under the said Housing Scheme. Hence, the appellant should refund the first instalment of Rs.45,000/- to the Executive Officer, Kolaghat Panchayat Samity. It was further indicated in the

order that the appellant/writ petitioner herein would have the opportunity to apply under the Housing Scheme, subject to he complying with the requirements of the applicable rules.

The aforesaid order of the BDO was challenged by the present appellant before the learned Single Judge in this round of litigation.

The learned Single Judge recorded the entire background of the case leading to the present litigation. The learned Judge noted that the representation dated March 10, 2021, which, the BDO considered and disposed of in terms of the earlier Division Bench's order, is a verbatim reproduction of the letter dated April 12, 2019, which was an earlier representation by the appellant. The learned Judge recorded that the BDO has indicated sufficient reasons in the order assailed before the learned Single Judge. The learned Judge further recorded that a Single Judge and a Division Bench, in the earlier round of litigation, did not find any illegality in the previous decision of the BDO claiming refund of the money or in the alternative, asking the petitioner to choose a different plot in respect of which he had clear title and possession. The learned Judge disposed of the writ petition with the following observations:-

“ It is made clear that in the event the petitioner can show a clear title in respect of any other plot or is ultimately successful in proving his title in respect of the concerned plot, the petitioner may apply for grant of such benefit under Awas Plus for fresh inclusion as already directed by the authority in the order impugned, subject to the petitioner fulfilling other eligibility criteria and the cut-off date for such inclusion had not expired. ”

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

We have heard learned counsel for the parties at some length. In the earlier round of litigation, the Division Bench specifically recorded that there were rival claims and civil suits pending in respect of the land on which the present appellant proposed to build his house under the aforesaid government Scheme. In the impugned order, it is recorded that the land in question is not recorded in the name of the appellant/writ petitioner. Mutation proceedings may be pending. However, until and unless the proceedings end in favour of the appellant, the Record of Rights will not be corrected in favour of the appellant. There appears to be other civil disputes regarding the ownership of the land in question. We must also keep in mind that mutation does not confer title. The government rules do not entitle a person to any benefit under the Housing Scheme if the land on which that person plans to build a house, is not clearly recorded in his name in the Record of Rights. In the present case, there is no dispute that the land in question is not recorded in the name of the appellant.

The appellant, however, says that he has already completed construction of his house on the concerned plot of land and is residing in that house. We are at a loss to understand how he could do that, but we make no further observation in that regard. However, that he has already completed construction, will not create any special equity in his favour, if the same has not been done in accordance with law.

As of now, the appellant does not appear to be entitled to any benefit under the aforesaid Housing Scheme. The learned Single Judge has already provided that if in future he is able to demonstrate clear title, he would be entitled to apply under the Scheme.

We see no apparent infirmity in the order under appeal. It is a well reasoned order and we completely agree with the conclusion reached by the learned Single Judge.

The appeal and the connected application are, accordingly, dismissed. There will be no order as to costs.

Affidavits not having been called for, the allegations in the stay petition, shall be deemed not to have been admitted by the respondents.

All parties shall act on server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)