

ORDER SHEET
APO/99/2023
WITH
EC 91 of 2023
IA NO: GA/1/2023

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

NUR ALI @ MD. NUR ALI @ NUR ALI MOHAMMAD
VS
SILIGURI JALPAIGURI DEVELOPMENT AUTHORITY AND ANR

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 26th July, 2023

Appearance:
Mr. Saptangshu Basu, Sr. Adv.
Mr. Ayan Banerjee, Adv.
Mr. Avishek Guha, Adv.
Ms. Akansha Chopra, Adv.
Mr. Ishan Saha, Adv.
Ms. Debarathi Das, Adv.
Ms. Debashree Dhamali, Adv.
....for the appellant.

Mr. Ashis Shah, Adv.
..for the respondent No.2

Mr. Ahin Choudhuri, Sr. Adv.
Mr. Suddhasatva Banerjee, Adv.
Mr. Anujit Mookherji, Adv.
Mr. Rajdeep Mantha, Adv.
...for the intervenor.

Mr. Anirban Ray, Adv.
Mr. Raja Saha, Adv.
Mr. Chayan Gupta, Adv.
Mr. Aviroop Mitra, Adv.
..for Siliguri Jalpaiguri Development Authority

The Court: Order in terms of prayer (a) of the petition.

We admit the appeal.

We are in a position to dispose of this appeal dispensing with all formalities.

This appeal is from a judgment and order dated 6th July, 2023 in an execution proceedings.

Here and now we add Mr. Ahin Choudhuri, learned senior advocate's client SLRL Agencies having its place of business at Dreamvalley, P. O. Eatellite Township, Siliguri, Jalpaiguri, PIN-734015 as a party respondent.

In the execution proceedings, Bengal Unitech Universal Siliguri Projects Limited, the respondent no.2 herein, is the award-holder. Siliguri Jalpaiguri Development Authority, the respondent no.1, is the award-debtor.

Execution is sought to be levied against a very huge parcel of land situated at Dabgram, J.L. No.2, Sheet No.16 within Police Station Rajganj, Dist-Jalpaiguri in West Bengal. The execution proceedings proceed on the premise that this parcel of land belongs to the award-debtor. In those execution proceedings, the client of Mr. Choudhuri, which has been added as a respondent in the appeal today, has been declared as the highest bidder. Learned counsel submits that his client has already invested several hundred crores for acquiring this land.

While the execution proceedings were going on, the appellants made an intervention application.

On examining the facts pleaded and grounds made in the intervention application and hearing learned counsel, we have learnt that between 2004 and 2006 this parcel of land was acquired by the Government, the requiring body being Siliguri Jalpaiguri Development Authority. About 200 acres of such land were acquired.

An award was also passed in terms of which, inter alia, the intervenors were paid some compensation. Mr. Basu, learned senior advocate for the appellants/intervenors, clarifies that this was only in respect of 0.6 acres of land.

In 2021, the intervenors filed writ applications in this Court, WPA/557/2021, WPA/558/2021, WP 668/2021, WP 670/2021 and WP 2251/2022 claiming, inter alia, further compensation or in the

alternative declaration from the court that the acquisition had lapsed and that the land which they own within the said parcel of land which is about 3 acres be returned to them.

The writ application appeared to have been admitted on 15th March 2021. It is still pending.

The application for intervention made by Mr. Basu's client before the executing court has been dismissed with costs assessed at Rs.50,000/-.

Hence this appeal.

Mr. Basu contends that the land which his clients are claiming back from the state on lapse of acquisition should not be part of the property being sold in execution.

In our view, whether the appellants are entitled to further compensation or return of the land and if entitled to return of the land, to what extent, is the subject the matter for determination by the writ court. It is to be deemed that the acquired land belongs to the judgment-debtor, Siliguri Jalpaiguri Development Authority, subject to the result of the writ or any other proceeding in which this issue may be involved.

In those circumstances, we find no infirmity in the ultimate conclusion reached by the writ court in the impugned judgment and order dated 6th July 2023, save and except that any sale of the subject property in execution would abide by the result of the above writ applications.

As far as imposition of costs is concerned, Mr. Basu, learned senior advocate shows us *Satyapal Singh v. Union of India And Another* reported in (2010) 12 SCC 70. Mr. Justice R. V. Raveendran while delivering the judgment observed the following in paragraphs 10 and 11.

“10. The levy of such exemplary costs in favour of the High Court Legal Services Committee, is not a healthy practice. The costs may be justifiably made

payable to the High Court Legal Services Committee or other Legal Services Authorities, where before the other side is served or represented, the court wants to penalise a petitioner for lapses/omissions/delays, as for example, where the petitioner fails to pay the process fee for service of respondents, or fails to cure defects or comply with office objections, or where there is delay in refiling of petitions. Once the other side is represented, the costs levied by reason of any attempt by a party to delay the proceedings, should normally be for the benefit of the party who has suffered due to such conduct. Only where both the parties are at fault, costs may be ordered to be paid to Legal Services Authority. At all events, the power to levy exemplary costs, it is needless to say, should be used sparingly to advance justice. It should be threatening and oppressive.

11. In view of the above, we delete the direction for payment of exemplary costs of Rs.50,000/-. Subject to such deletion, the special leave petition is dismissed.”

We would like to add that costs have always been understood and should be understood as compensation paid by a party to the other for being compelled to participate in a frivolous litigation. The compensation is to reimburse the winning party of the costs and expenses incurred in defending the litigation. Costs should not be more than the reasonable expenses that the other party was required to incur to defend the litigation. It should never be perceived as a fine imposed on a party or an expression of the displeasure of the learned Judge quantified in terms of money.

We set aside the direction with regard to the costs.

We affirm the impugned judgment and order dated 6th July 2023 with the above modification.

We make it clear that save and except what has been expressly observed by us hereinabove, we have not gone into the merits of the matter.

At the end Mr. Basu submits that the following portion of the impugned judgment and order be expunged.

“In my view this intervening application is completely without merit and deserves to be dismissed with costs as the same is frivolous, vexatious and only for the purpose of wasting the time of the Court and, accordingly, is an abuse of process of this Court.”

As we have observed before that we have not gone into the merits of the matter. Whether the comments of the learned Judge are justified or not would depend on the result of the writ applications.

The appeal (APO No. 99 of 2023) and the stay application (IA No. GA 1 of 2023) are disposed of.

As affidavits were not invited, the allegations contained in the stay application are deemed not to have been admitted.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)