

01.05.2024

Ct. no.654

Sl. Nos.216

SS

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)**

**WPA 801 of 2023
(specially assigned)**

**Enamul Haque
Vs.
State of West Bengal & Ors.**

Mr. Kishore Mukherjee
..for the petitioner

Mr. Chandi Charan De, Ld. AGP
Mr. Anirban Sarkar
..for the State

Mr. Ayan Banerjee
Ms. Debasree Dhamali
...for the respondent nos.5 & 6

By the present writ petition the writ petitioner has sought for release and hand over of possession of the land in terms of judgement and decree passed by the learned Civil Judge (Junior Division), 2nd Court, Arambagh, Hooghly in Title Suit No. 11 of 1990.

It is contended by the petitioner, inter alia, that he is the absolute owner in respect of the property within plot no.128 measuring about 7 decimals, plot no.129 measuring about 2 decimals and plot no.133 measuring about 22 decimals under Mouza Arambagh comprised in J.L. No.34, Khatian No.48 under Police Station Arambagh, District Hooghly. It is further contended that the Executive Engineer, P.W.D. had encroached upon certain portion of the aforementioned land and constructed/set up S.B.S.T.C. bus depot without

adhering to legal norms. The petitioner approached the L.A. Collector, Hooghly as to whether the aforementioned land has been acquired by the State for construction of bus stand and it was informed that only 1 decimal of land within plot No.129 has been acquired and there is no notice of acquisition in respect of plot nos.128 and 133 lying under Mouza Arambagh at any point of time. The petitioner submitted a demand notice through his learned Advocate on 11th November, 2022 for hand over of peaceful possession of the decretal property or alternatively for payment of compensation. Since the same was not considered the petitioner preferred the present writ petition.

Mr. Kishore Mukherjee, learned Advocate for the petitioner submits that the Civil Court has declared the right, title and interest of the petitioner over the land comprised within plot nos.128, 129 and 133, which is 'ka-1' schedule of Title Suit No.11 of 1990. The Executive Engineer, P.W.D. has encroached upon certain portions of the property. The petitioner approached for either release of the encroached property in his favour or for grant of compensation. No steps till date has been taken by the State authorities for handing over the property encroached. The petitioner has a constitutional right in terms of Article 300A of the Constitution of India to hold property. To buttress his contention he relies on a decision of the Hon'ble Supreme Court passed in ***Lachhman Dass versus Jagat Ram & ors.***, reported in

(2007) 10 SCC 448. He seeks an appropriate direction be issued upon the State authorities for releasing the land of the petitioner or alternatively pay compensation to the petitioner in respect of the property encroached.

In reply to the contention of the petitioner, Mr. Chandi Charan De, learned Additional Government Pleader submits that the petitioner by way of the present writ petition has sought for execution of the decree passed by the Civil Court, which cannot be pursued before the Writ Court. Further, the compensation in respect of the acquired portion in plot no.129 has already been paid. There is no such encroachment on the property of the petitioner by the Executive Engineer, P.W.D. as has been alleged. The Civil Court while passing the decree has categorically observed that the petitioner is entitled to get compensation in respect of 0.01 decimal of property within Dag No.129. Therefore, the prayer made by the petitioner in the present writ petition is evasive and as such the writ petition is liable to be dismissed.

Mr. Ayan Banerjee, learned Advocate appearing on behalf of the respondent-S.B.S.T.C. submits that S.B.S.T.C. has not encroached within the property of the petitioner. There is no iota of material of any encroachment. The S.B.S.T.C. was never made a party in the civil suit. He further submits that the bus stand is not situated in the petitioner's land. He also seeks for dismissal of the writ petition.

In the present writ petition the contention of the petitioner is precisely based on encroachment of his property by the Executive Engineer, P.W.D. Such plea of encroachment was also raised before the Civil Court by the petitioner in Title Suit No. 11 of 1990. The Civil Court after considering the evidence on record has categorically observed that the plaintiff (petitioner herein) did not place any document to prove encroachment. No such commission was done to prove the alleged encroachment. Therefore, the fact alleged in the writ petition that there was encroachment by the Executive Engineer, P.W.D. has already been decided by the Civil Court holding that there was no encroachment. Such being the position the prayer of the petitioner for release of the land, which has been encroached does not arise at all. Though the decision in *Lachhman Dass (supra)* is substantial but does not apply to the fact of the present writ petition.

In light of the aforesaid discussion, the writ petition being **W.P.A. 801 of 2023** stands dismissed.

All connected applications, if any, stand dismissed.

There will be, however, no order as to costs.

Interim order, if any, stands vacated.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)