

21.03.2024
rpan/07

WPLRT 8 of 2024
A & J Main & Co (Engineers) LIP & Others
– Versus –
The State of West Bengal & Others

Mr. Sakti Nath Mukherjee (through V. C.),
Mr. Joydip Kar,
Mr. Arindam Banerjee,
Mr. Raghunath Ghose,
Ms. Santimoy Bhattacharjee,
Ms. Rituparna Saha
... for the Petitioner.

Sk. Md. Galib,
Ms. Sujata Ghosh
... for the State.

Mr. Sandipan Banerjee,
Ms. Amrita Pandey,
Mr. Ankit Surekha
... for the HMC/Respondent no.5.

Supplementary affidavit, as presented on behalf of the petitioner is retained with record.

This present writ petition is directed against the order dated December 5, 2023 passed by the learned Tribunal in O.A – 3300/2023 of (LRTT). By the order impugned, the learned Tribunal has refused to grant ad interim order, as prayed for on behalf of the petitioner, in the following words:

“ ... At the very outset, Ld. Counsel for the applicant submits that the present application has been filed seeking a direction upon the State Respondents for staying of the operation of the letter issued by the Assistant Secretary Govt. of West Bengal in LR & RR & R Dept. Vide. Memo NO. 5031-1S/1/20, dt 05/12/2022 as it appears vide page 43 of the present application.

At this instance, Ld Government Representative submits that he has specific objection regarding the relief sought for in the present application being not

maintainable and further prays for liberty to submit affidavit in opposition in this regard.

Head. Considered. Liberty granted to submit the same with copy to other parties within six weeks before the next date and in that event applicant may file affidavit in reply four weeks thereafter.

Ld. Counsel for the applicant further prays for an interim order of restraining the State Respondents and private respondents in this regard which is vehemently objected to by the Ld. Government Representative.

Heard. Considered.

We are not inclined today to grant such injunction. However, it may be considered only after exchange of affidavit on the next date so fixed...

In the original application, the following interim reliefs were prayed for:

“Pending final decision of the application, your applicant pray for an ad-interim order of stay of the operation of the impugned letter and not to initiate any further proceeding in the matter and not to disturb the peaceful possession and construction work done or to be done by your applicant in any manner and in any form pursuant to the Plan sanctioned by the Howrah Municipal Corporation.”

Mr. Mukherjee, learned senior advocate, being assisted by Mr. Kar, learned senior advocate and Mr. Banerjee, learned advocate, advances his argument on behalf of the petitioner. Drawing our attention to the R. S. record of rights of the subject plots of land, it is sought to be contended by him that in the R. S. record of rights of the lands, the petitioner's name was recorded as ‘Dhakaldar’. According to Mr. Mukherjee, ‘Dhakaldar’ is a term which is coined by the settlement offices of the State to signify the non-

agricultural tenant. He contends that the definition of intermediary, as incorporated in Section 2(i) of the West Bengal Estates Acquisition Act, 1953 (in short, the '1953 Act'), means a proprietor, tenure-holder or under-tenure holder above a raiyat or a non-agricultural tenant and in terms of Section 4 and 5 of the 1953 Act, only the rights of the intermediaries in the estates were vested in the State.

It is urged by him that the interest of the non-agricultural tenant was not vested in the State and the non-agricultural tenancy was kept outside the purview of the '1953 Act'. In support of his such contention, he cited a decision rendered in the judgment of *Shibsankar Nandy Vs. Prabartak Sangha and Others*, reported in AIR 1967 SC 940.

It is contended by him that the petitioner is holding the lands within the prescribed ceiling limit. He argues that since the non-agricultural land was kept under the purview of the 1953 Act, the order passed by the Assistant Secretary dated 5th December, 2022 is misconceived.

He asserts that the State is not empowered to invoke the provisions of Section 6(3) of the 1953 Act in respect of the lands in question. To embolden such submission, he places reliance upon an unreported decision rendered by a Hon'ble Coordinate Bench of this Court in the case of *Abhijit Tie Up (P) Ltd. & Ors. Vs. The State of West Bengal* in WPLRT 64 of 2022 on 14th September, 2023.

Mr. Mukherjee further contends that the words used in the order impugned indicate that unless the state files its

exception to the original application, the learned Tribunal will not consider the petitioner's prayer for injunction.

Quite apart from the above, Mr. Mukherjee invites us to visualize the situation of lands and drawing our attention to the averments made in the supplementary affidavit, he submits that upon receipt of the sanctioned building plan from the concerned municipality, the petitioner has constructed almost 400 flats and 85% of construction work of the entire project have been completed and even many of the flats in under-construction stage have already been sold out to the intending buyers. He submits that in such conspectus, the petitioner be permitted to proceed with the construction work subject to the result of the final outcome of original application.

Mr. Banerjee, learned advocate appearing for the Howrah Municipal Corporation / respondent no.5 submits that in 2018 the building plan, as submitted by the petitioner was sanctioned according permission to it to raise construction but subsequently, it was detected the land or a portion of the land was recorded as '*karkhana*' (factory) and as such by passing an order, the petitioner was directed to stop the construction work. He submits that the petitioner may be allowed to complete the construction but in the event if it is subsequently found that the petitioner is not entitled to retain and/or hold the lands, the Corporation is empowered to proceed against the structure in accordance with law.

Md. Galib, learned advocate appearing for the State-respondents draws our attention to the impugned letter

dated 5th December, 2022 issued by the Assistant Secretary to the Government of West Bengal, L&LR and R.R. & R Department and submits that in the case at hand, the primal issue is that the petitioner in derogation of the provisions of 4(c) of the West Bengal Land Reforms Act, 1955(in short, the Act of 1955) has raised the construction without making any application for conversion of land. He argues that the petitioner desperately wants to complete construction and as such the petitioner has been making efforts to obtain *post facto* approval of conversion of the lands requiring the State to invoke the provisions of Section 4(c)(6) of the Act of 1955 read with Rule 166 of the West Bengal Land Reforms Manual, 1991.

Heard the learned advocates appearing for the respective parties. Perused the materials on record.

From the order impugned, it transpires that the learned Tribunal has refused to pass the ad-interim order of injunction and the date was fixed on 6th March, 2024 for taking decision on the application for injunction for grant of the *interim* order, as prayed for. We have been informed that no reply has been filed on behalf of the State as yet.

It seems to be a fine artistic work to be carried out by a busy hand while sitting in an appeal over an interim order or while exercising power of judicial review of such order, to deal with the contentions canvassed on behalf of the respective parties on merits of the main proceeding and render reasoned decision without touching upon the merit of the matter only to ensure so that the learned Court or

Tribunal below or any statutory authority is not influenced by any of the opinions expressed by the appellate forum and/or the Court.

The issues, as raised by Mr, Mukherjee including the issue of applicability of the provisions of Section 6(3) of the 1953 Act in respect of the lands retained and/or held by a company which was in operation or was functioning on the date of vesting still impregnate controversy. There is conflict of decisions regarding applicability of the 1953 Act to the non-agricultural lands and/or non-agricultural tenancy.

The land retained by the intermediary or a lessee for running a factory is governed under Section 6(1)(g) read with Section 6(3) of the 1953 Act. In view of Sections 4 and 5 of the 1953 Act, the proprietary right of the intermediary stood extinguished and the State has become owners of all lands. By virtue of Section 49 read with Section 52, the rights of raiyats or under-raiyats were also vested in the State treating those as intermediaries and as such, the question as to whether land retained and/or held by a raiyat for factory-related activities will be governed by the provisions of Section 6(3) of the 1953 Act still springs up in numerous litigations. In the letter of the Assistant Secretary dated 05.12.2022, the petitioner/company was declared to be a lessee under the Government. A lessee within the meaning of Section 6 of 1953 Act can only retain the land and not hold the same. Therefore, question may arise as to whether such person has any transferable right in respect of the lands or the structure or structures standing thereon.

The dispute has now stretched its wings in various dimensions. Throwing a challenge to the letter dated 15th December, 2022, the petitioner has moved the learned Tribunal with O.A. no.3300 of 2023 and the order dated 05.12.2023 passed in O.A. no. 3300 of 2023 is impugned in this writ petition. One public spirited person has instituted a public interest litigation claiming that in defiance of the Section 4(c) of the Act, the petitioner has started construction. As per statement made by Mr. Galib, the petitioner has been making effort to obtain *post facto* approval of conversion. Such litigation is pending final adjudication. We have been informed that challenging the order of the Municipal Corporation whereby the petitioner was directed to stop the work, one writ petition was preferred by the petitioner but since the same was not decided in its favour, the petitioner has preferred an intra-court appeal which is pending final adjudication and as such, order of Municipality is under consideration of a Hon'ble Co-ordinate Bench of this Court.

Indisputably, injunction including ad-interim order of injunction is a discretionary as well as an equitable relief. While granting ad-interim relief, in addition to taking into consideration the three golden principles (prima facie case, balance of convenience and irreversible injury), the Court can also consider the time at which the party seeking such relief had notice of the act complained and whether the party had acquiesced for some time. In the letter of the Assistant Secretary dated 05.12.2022, which is yet to swing into action,

it was claimed that the petitioner is a lessee in respect of the land and hence, the land is to be governed under section 6(3) of 1953 Act but the order impugned postulates, the petitioner has earnestly prayed for such relief at the fag end of December, 2023. There must be some grave urgency or circumstances which will lead the Court/Tribunal to grant ad-interim order of injunction before affording the adversary to deal with averments made in the application. The Court should also weigh the factors whether irreparable injury will ensue to the party seeking such relief in case such relief is denied to him. In our opinion, at this stage, the judgments relied upon by Mr. Mukherjee have got no applicability.

Taking stock of such events narrated above, we do not find any compelling reason which could have prompted the learned Tribunal to grant ad-interim relief, as sought for. In such conspectus, we do not find any material to infer that the Tribunal has misdirected itself in not granting the ad-interim relief, as prayed for. We also do not find any error, least to say, any patent error or jurisdictional error in the order impugned nor does the same suffer from any substantial failure of justice warranting interference of the same.

In view of foregoing analysis, the writ petition is dismissed, however, without any order as to the costs.

To take further pre-caution, it is made clear that the views taken by us in this order are tentative and the learned Tribunal shall consider the petitioner's prayer for injunction

without being influenced by any of the observations made in the order without unnecessary delay.

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

(Partha Sarathi Chatterjee, J) (Tapabrata Chakraborty, J.)