

06.11.2024
Sl. No. 14.
D/L.
Mithun
Ct.No.39.

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

**WPA 2104 of 2023
(Specially Assigned)**

**Parimal Maji & Ors.
Vs.
The State of West Bengal & Ors.**

Mr. Pinaki Dhole,
Mr. Ravindra Kumar Pathak,
Mr. Kaustav Banerjee

..for the petitioners

Mr. Anup Kanti Poddar,
Ms. Khusboo Ruia

...for respondent nos.5 & 6.

Ms. Susmita Saha Dutta

...for respondent no.4.

Ms. Manika Roy,
Ms. Shinjita Ray,
Ms. Ankita Chowdhury

...for the N.H.A.I.

Mr. Chandi Charan De, Ld. AGP.
Mr. Anirban Sarkar

...for the State respondents.

This writ petition has been filed by the petitioners challenging the order dated 8th June, 2020 passed in Misc. Case No.2/23(NH-2)/12-13 by the Competent Authority under National Highways Act, 1956.

The case of the petitioners in nutshell is that the grandfather of the petitioners namely Sarbeswar Maji was the original owner and possessor of plot nos.703, 704, 650, 651, 653, 654 in Mouza: Chanda, J.L. No:29, P.S. Jamuria, District-Burdwan along with other plots of lands in Mouza Saora and Ningha in the District-Burdwan (now Paschim Bardhaman). During the Second

World War, by a Notification bearing Order No.713 L.A. dated 28th August, 1942 a huge quantum of land of respective owners including the land of the predecessor-in-interest of the petitioners were requisitioned by the Ministry of Defence, Government of the then British India comprised in different Mouzas namely, Chanda, Saora, Ningha and Sripur. The condition of the requisition was that the lands will be placed under disposal of the Wing Commander Regional Air Force, Asansol for a period till six months after the termination of the war, if not relinquished earlier. After the termination of World War-II before June, 1945, the requisitioned lands got automatically derequisitioned after expiry of 1945 as per terms of the requisition. The lands were again returned back to the original owners and their names were recorded in the R.S. Record of Rights including the lands of the said predecessor-in-interest of the petitioner. In the year 1964, the petitioners came to learn that the Settlement Charge Officer, Asansol, amalgamated small R.S. Plots of derequisitioned lands into big plots. In a *suo motu* proceedings, the entire derequisitioned land was shown as under Government of India 'Out of record' and the name of Civil Aviation Department was recorded in the '*Mantabya Column*'. On being approached since no relief was granted by the B.L. & L.R.O. and D.L. & L.R.O. Office, the father of the petitioners and petitioner no.1 and 2 filed a Civil Suit being Title Suit No.213 of 1987

before the learned Civil Judge (Junior Division) 2nd Court at Asansol which was subsequently renumbered as Title Suit No.49 of 1994 before the Court of Civil Judge (Junior Division) Additional Court at Asansol praying for declaration of right, title and interest on all the plots. The said suit was finally decreed in favour of the plaintiffs on 30th June, 1999 wherein the plaintiffs-petitioners were declared as owners and recording of the name of Civil Aviation department in the record of rights as erroneous. Thereafter the father of the petitioner and petitioner no.1 and 2 made an application before B.L & L.R.O., Jamuria for recording their names in the record of rights. Similar application was also filed before D.L. & L.R.O., Burdwan. Since no action was taken with regard to such wrong recording in the ROR, the petitioner nos.1 and 2 along with their father filed an application before the learned West Bengal Land Reforms and Tenancy Tribunal being O.A. No.3502 of 2007. The father of the petitioners and the petitioner nos.1 and 2 made representation before the competent authority for inclusion of their land in the notification as the lands fall within proposed 6 lane of National Highway-2. Since that representation was not considered, the father of the petitioners and petitioner nos.1 and 2 filed a writ petition being WP 5304(W) of 2012 wherein liberty was granted to the petitioners to approach the competent authority by filing a detailed representation ventilating their grievance. Such representation was considered and

rejected by the impugned order. Challenging the said order, the present writ petition has been filed.

Mr. Pinaki Dhole, learned Advocate appearing for the petitioners submits that the competent authority in its impugned order has not dealt with the points that were raised in the detailed representation. More so, though direction was issued by the Hon'ble Court upon the competent authority for considering the decree passed by the Civil Court, there is no reflection in the order regarding consideration of the decree passed by the Civil Court despite such copy of the decree been placed for consideration before the competent authority. The Civil Court has declared the right, title and interest and possession of the plaintiffs-petitioners over the land in question and the recordings in the R.S.R.O.R. in the *suo motu* proceeding under Section 44(2a) of the W.B.E.A. Act as erroneous which fact was never taken into consideration by the competent authority. He further submits that the petitioners have been granted structural compensation which tantamounts to the fact that the petitioners were in possession of the land-in-question. The competent authority has awarded compensation in favour of the Airport Authority on the basis of the L.R. Record of Rights without considering the fact that the right, title and interest of the petitioners was declared by the Civil Court and that apart the recordings in the record of rights is not conclusive and is rebuttable. In light of his aforesaid submissions, he

prays for setting aside of the impugned order of the competent authority dated 8th June, 2020.

On the contrary, Mr. Anup Kanti Poddar, learned Advocate appearing for the respondent nos. 5 and 6, National Airport Authority submitted that after termination of World War-II, the land in question did not automatically return to the predecessor-in-interest of the petitioners. The requisition of the land-in-question continued. The L.R. Record of Rights clearly shows that there is run way over the land-in-question. After the coming into force of National Airport Authority Act, 1985 the land has been transferred to the National Airport Authorities by the Civil Aviation Department. He also indicates that the National Airport Authorities were never made a party-defendant in the civil suit and as such the decree passed in the civil suit is not binding upon them. He submits that the writ petition is liable to be dismissed.

Mr. Chandi Charan De, learned Additional Government Pleader representing the competent authority submits that the compensation is disbursed to the awardees on the basis of the record of rights. The competent authority is not authorized to take decision with regard to the title of the parties and is to act on the record of rights, which in the present case has been duly followed. As such the writ petition is short of merit.

In the previous round of litigation being WP No.5304(W) of 2012, following direction was passed on 20th September, 2019 which is quoted hereinbelow:

“Under such circumstances, this writ petition is disposed of with liberty to the petitioners to approach the competent authority under National Highways Act, 1956 by filing detailed representation ventilating their grievances. The concerned authority will decide on the basis of the submissions made by the petitioners, upon granting an opportunity of hearing to all concerned, namely, the petitioner, the National Airport Authority, the Block Land & Land Reforms Department and any other interested parties. All concerned will be at liberty to produce such documents in support of their claim as may be necessary for proper decision in the matter. The judgment and decree of the Civil Court and the appellate court in favour of the petitioner will be taken into consideration. With regard to the allegation of encroachment, the petitioners are at liberty to approach the Civil Court.”

Upon going through the aforesaid order, it is palpable that the petitioners were granted liberty to approach the competent authority under the National Highways Act, 1956 by filing detailed representation ventilating their grievances. It was also directed in the said order that the judgment and decree of the Civil Court and the appellate court in favour of the petitioner will have to be taken into consideration.

It is found from Annexure P/6 of the writ petition that the Civil Court passed the following order in Title Suit No.49 of 1994:

“That the suit be and the same is decreed on contest without cost against defendant no.3 to 9 and ex parte without cost against defendant 1 & 2.

Further it is ordered that plaintiffs do get decree of declaration that plaintiffs got right, title, interest and possession over the suit lands described in the schedule of the plaint and that the R.S.R.O.R. recorded in 1964 by the defendant no.5 in suo motu proceeding under Section 44(2a) of the W.B.E.A. Act are erroneous. Other prayer is rejected.”

It is relevant to note that the appeal being no. Title Appeal 26 of 1999 against the aforesaid judgment and decree was dismissed for default.

Pursuant to the order passed in W.P. No. 5304(w) of 2012 the petitioner submitted a detailed representation along with the copy of judgment and decree of the Civil Court. The petitioner also filed a written argument. However, the impugned order of the competent authority does not record of consideration of the judgment and decree passed by the Civil Court and the appellate court, which was directed to be considered by it.

In view of the above, the impugned order dated 8th June, 2020 passed by the competent authority is set aside.

The matter is remanded back to the competent authority with a direction to consider afresh the representation of the petitioners filed pursuant to order passed in WP No.5304(W) of 2012 upon considering the judgment and the decree passed in the civil suit and the

appellate court in favour of the petitioner and dispose of the same by a reasoned order after hearing all the interested parties including the petitioners within a period of eight weeks from the date of communication of the order.

Learned Advocate for the petitioners is directed to communicate this order to the competent authority.

With the aforesaid observation, the writ petition stands disposed of.

All connected applications, if any, stand disposed of.

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.)