

22.05.2024

Ct. no.654

Sl. No.249

ss

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

W.P.A. 2679 of 2023
(specially assigned)

Sadhan Majhi
Vs.
Union of India & ors.

Mr. Sankar Nath Mukherjee
Mr. Niraj Gupta
... for the petitioner

Mr. Ashim Kr. Ganguly
Mr. Sambuddha Dutta
... for the State

Mr. Amal Kumar Datta
... for the Union of India

Ms. Manika Roy
Ms. Shinjita Ray
... for the N.H.A.I.

By the present writ petition the petitioner has prayed for consideration of his representation dated 6th December, 2022 by respondent-authorities.

The petitioner’s case in nutshell is that he is the owner of the land situated at Mouza Berma, J.L. No.73, Police Station Balarampur in Dag/Plot Nos.580, 581 and 582. The petitioner was served with a notice under Section 3G of the National Highways Act. 1956 vide notice dated 9th February, 2022 asking the petitioner to appear on 17th February, 2022 at 11.30 a.m. with all relevant papers before the office of the District Magistrate, Purulia. Pursuant to such notice the writ petitioner appeared for hearing and submitted necessary documents. However, in spite of such hearing the compensation was not

disbursed in favour of the petitioner. Accordingly, on 6th December, 2022 the petitioner made a representation before the Competent Authority for release of compensation in his favour. Since no steps were taken for releasing of compensation the petitioner preferred the present writ petition.

Mr. Sankar Nath Mukherjee, learned Advocate for the petitioner submits that the petitioner has made an innocuous prayer for consideration of his representation dated 6th December, 2022 for release of compensation in his favour since hearing on 17th February, 2022 the release of compensation has been kept pending by the Competent Authority. He seeks for appropriate direction for consideration of the representation of the petitioner by the Competent Authority.

Mr. Sambuddha Dutta, learned Advocate for the State-respondent submits that it has been categorically stated in the report of the State-respondents that the petitioner has no interest so far as plot nos.580 and 581 are concerned. Though the petitioner is recorded as *raiyat* in respect of plot no.582, however, the right, title and interest of the petitioner in respect of the said plot of land has been challenged by one Sri Sri Jagannath Mahaprabhu represented by its sebaitis and worshippers in a civil suit being Title Suit No.288 of 2015 before Civil Judge (Junior Division), Purulia in which an order of *status quo* has been passed by the civil court. Thus, until and unless the right of the petitioner is decided by the

civil court in respect of the plot no.582, the representation of the petitioner cannot be considered. The pendency of the civil suit nor the statement in report that the petitioner has no right over Plot Nos. 580 and 581 has been denied by the petitioner and as such doctrine of *non-traverse* applies with regard to such aspect. The petitioner has deliberately suppressed the pendency of the title suit. It is settled proposition of law that suppression of material facts would lead to dismissal of the writ petition at the threshold. The litigant must observe total clarity and candour in the pleadings in seeking equitable remedy. To buttress his contention he relies on the decision of the Hon'ble Supreme Court passed in ***Amar Singh versus Union of India***, reported in **(2011) 7 SCC 69**. In light of his aforesaid submission, he prays for dismissal of the writ petition.

Ms. Monika Roy, learned Advocate for the respondent-NHAI also submits that there has been suppression of material facts by the petitioner for getting favourable order from the Court. She also submits that since the petitioner has not denied the statements in the report of State-respondents of non-existence of his right over Plot Nos. 580 and 581 as well as pendency of civil suit as such, the respondent's case made out becomes acceptable applying doctrine of *non-traverse*. She seeks for dismissal of the writ petition.

In reply, Mr. Sankar Nath Mukherjee, learned Advocate for the petitioner submits that the facts of the

cited case in *Amar Singh (supra)* is distinguishable inasmuch as there was suppression of the petitioner before the Court that the petitioner gave a statement under Section 161 of the Code of Criminal Procedure in connection with investigation arising out of F.I.R. lodged on 30th December, 2005. The Hon'ble Supreme Court in the said decision has relied on decision which dealt with injunction and *ex parte* orders which is different from the prayer made by the petitioner in the present writ petition. Accordingly, the proposition of the aforesaid decision in *Amar Singh (supra)* does not apply in the present case.

Having heard the learned Advocates for the respective parties, the only issue which has fallen for consideration is whether respondent-authorities be directed to consider and decide the representation of the petitioner in the facts and circumstances of the case.

It has been categorically stated in the report of State-respondents that out of plot nos.580, 581 and 582, the petitioner is a recorded *raiyat* in respect of plot no.582 only. Such statement made in the report has not been denied in the exception filed by the petitioner. Therefore, it goes without saying that the contention of petitioner that he is owner in respect of Plot Nos. 580, 581 and 582 cannot be accepted. Now, this Court is to consider the claim of petitioner in respect of Plot No. 582 only.

On perusal of report of the State-respondents at page 20 it reveals that one Sri Sri Jagannath

Mahaprabhu represented by its sebaits and worshippers has filed a civil suit being Title Suit being No.288 of 2015 before the Civil Judge (Senior Division), Purulia against petitioner and others. From page 22 (Information Slip), it is found that a *status quo* order has been passed in the said suit. The title suit annexed to the report at page 20 shows that the civil suit has been filed by the plaintiff for declaration that the suit plot no.582 is a *debottar* property of the plaintiff no.1 who has exclusive right, title and interest over the land. Therefore, it manifests that the right of the petitioner in respect of Plot No. 582 is challenged in the said suit. The entitlement of the petitioner so far as compensation is concerned, is based on his right over the plot in question. The disclosure of such fact is a material one so far the prayer of the petitioner in the writ petition is considered. Throughout the writ petition there is no such pleadings disclosing of existence/pendency of title suit being No.288 of 2015. In the aforesaid backdrop, since it was imperative for the petitioner to disclose the existence or pendency of civil suit, hence suppression of such material fact debars the petitioner from claiming any equitable relief. This Court finds substance in the submission of Mr. Sambuddha Dutta, leaned Advocate for the State-respondent relying on the decision of the Supreme Court in *Amar Singh (supra)* in this regard.

In light of the above discussion, the writ petition being **WPA 2679 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.)