

05.03.2024

Ct. no.654

Sl. No.153

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

**WPA 3143 of 2023
(specially assigned)**

**Masudan Bibi & anr.
Vs.
State of West Bengal & Ors.**

Mr. Siddhartha Sarkar
Mr. Hirak Roy
..for the petitioners

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

Mr. Debrup Bhattacharjee
Mr. Ritesh Kr. Ganguly
... for the respondent nos.5 & 6

Affidavit-in-reply filed on behalf of the petitioners is taken on record. Copy served.

The petitioners by way of present writ petition have prayed for consideration of their representation dated 9th January, 2023 by the respondent no.3, the Assistant Engineer PWD, Government of West Bengal, Kharagpur Sub Division, Paschim Medinipur.

The petitioners in the present writ petition contend that the petitioners are the recorded *patta* holders in respect of the land situated at Mouja Ruisanda, Dag No. 81/335, J.L. No.211, Police Station Kharagpur (Local), District-Paschim Medinipur. The respondent nos.5 and 6 in the month of August, 2022 have made unauthorised construction in the adjacent plot of the petitioners. The said respondents being industrial giants have encroached

lands of unfettered measures. The respondent nos.5 and 6 have set up a wall around their land encroaching public road, land of petitioners and local people. The petitioners alleging of such fact made representation before the concerned authority on 9th January, 2023. Since the said representation was not considered the petitioners have preferred the present writ petition.

The respondent nos. 5 and 6 by way of affidavit-in-opposition have categorically stated that though petitioners asserts deriving right over the land in question by way of *patta*, yet by order dated 9th June, 2023 the Revenue Officer has passed order annulling the *patta* of the petitioners for contravention of provisions under Section 49(2) of the West Bengal Land Reforms Act, 1955. Therefore, since the petitioners have no right over the land in question, they have got no *locus* to raise such issue by way of a writ petition.

Mr. Siddhartha Sarkar, learned Advocate appearing on behalf of the petitioners submits that the State in its report has annexed documents wherefrom it is evident that the Assistant Engineer, PWD, Kharagpur Division has passed order for demarcation of the PWD land at plot No.81/335, Mouja Ruisanda, J.L. No.211 under Police Station Kharagpur (Local), District Paschim Medinipur and therefore, the said proceeding should be allowed to be continued with a direction to conclude within a stipulated period. Referring to the decision of this Court passed in *Susmita Maity Jana versus Ganguram Hemram*

@ Ganguram Hembram & Ors. (in MAT 318 of 2022) he submits that even if the petitioners have no *locus* they have every right to maintain the present writ petition.

In reply to the above contention of the petitioners, Mr. Debrup Bhattacharjee, learned advocate for respondent nos. 5 & 6 submits that with the annulment of *patta*, the petitioners have no *locus* and the writ petition is liable to be dismissed.

Mr. Chandi Charan De, learned Additional Government Pleader appearing on behalf of the State-respondent submits that since the *patta* of the petitioners has been annulled they have got no *locus* to maintain the present writ petition and therefore, it should be dismissed with exemplary costs.

The petitioners in the present writ petition have claimed right over the land within Dag No. 81/335, J.L. No.211, Mouja Ruisanda under Police Station Kharagpur (Local), District Paschim Medinipur, on the basis of *patta* and it has been contended that the unauthorised construction has been undertaken in the adjacent plot of the petitioners. The document annexed to the affidavit-in-opposition at page 6 being Order No.5 dated 9th June, 2023 clearly shows that the *patta* of the land measuring 0.19 acre comprised in Plot No.81/335, Mouja Ruisanda, JL No. 211, Police Station Kharagpur (Local) in the name of petitioner no.1 and her husband Keramat Mallik has been annulled for contravention of provisions under Section 49(2) of the West Bengal Land Reforms Act, 1955.

The petitioners in their affidavit-in-reply disclose that an appeal has been preferred against such order of annulment. The annexure R1 at page 5 of the affidavit-in-reply shows that an appeal against such annulment order has been filed on 16th February, 2024. It is relevant to note that no order setting aside the order passed by the Revenue Officer for annulment has yet been passed in the appeal. Such being the position, the right of the petitioners over the land-in-question being annulled by the Revenue Officer raises the question of *locus* of the petitioners so far as the present writ petition is concerned.

Learned Advocate for the petitioners referring to *Susmita Maity Jana (supra)* tries to impress upon the Court that even if the petitioners have no *locus* the prayer in the writ petition is very much maintainable. In the cited decision, the Court noticed that the representation was made before the authority making serious allegations not only on misutilization of the fund but also the ill treatment perpetrated upon the Scheduled Caste students. Such representation has been kept by the authority in suspended animation, which appeared to the Single Bench to be of serious concern. Apprehension was shown at the time of hearing of the appeal that there has been ruckus in the past when such enquiry was conducted and there is every possibility that it would be repeated. In such circumstances, though the Hon'ble Division Bench considering the proposition of the Hon'ble

Supreme Court laid down in ***Ayaaubkhan Noorkhan Pathan versus State of Maharashtra & Ors.*** reported in **(2013) 4 SCC 465** observed that the reliefs couched in the writ petition raises serious question on the *locus* of the petitioner, yet it affirmed the order of the Single Bench. The fact is thus distinguishable.

In *Ayaaubkhan Noorkhan Pathan (supra)*, the Hon'ble Supreme Court held as follows :

“9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons.

Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. Infact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for

relief as regards the same. (Vide : State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12; Saghir Ahmad & Anr. v. State of U.P., AIR 1954 SC 728; Calcutta Gas Company (Propriety) Ltd. v. State of West Bengal & Ors., AIR 1962 SC 1044; Rajendra Singh v. State of Madhya Pradesh, AIR 1996 SC 2736; and Tamilnad Merchantile Bank Shareholders Welfare Association (2) v. S. C. Sekar & Ors., (2009) 2 SCC 784)."

The Hon'ble Supreme Court in the aforesaid decision has categorically laid down that a stranger cannot be permitted to meddle in any proceeding unless he satisfies the authority/court that he falls within the category of aggrieved persons.

Bearing in mind the aforesaid proposition laid down by the Hon'ble Supreme Court as above, the writ petition is liable to be dismissed.

Accordingly, the writ petition being **WPA 3143 of 2023** stands dismissed.

All connected applications, if any, stand dismissed.

Interim order, if any, stands vacated.

There shall be no order as to costs.

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

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)