

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPCRC 272 of 2019

In

WPA 30720 of 2014

with

CAN 1 of 2018(Old CAN No.6303 of 2018)

Asok Kumar Sinha

vs

Manoj Panth and others

For the petitioner : Mr. Achintya Banerjee
Mr. Anant Kumar Shaw
Mr. Tapan Coommer Dey
Mr. Tarun Kumar Chatterjee
Mr. Soumen Chatterjee
Mr. Asish Dutta
Mr. S. Ganguly
Ms. Shayani Das

.....Advocates

For the alleged contemnors : Mr. T.M. Siddique
Mr. Suddhadev Adak

.....Advocates

Heard lastly on : 21.05.2024

Judgment on : 12.07.2024

Jay Sengupta, J:

1. These are a contempt application for alleged violation of this Court's order dated 31.07.2018 passed in WPA 30720 of 2014, thereby directing restoring back possession of land, and a cross application for recalling of the said order.

2. Learned counsel for the petitioner/applicant in the contempt application, at the outset, submitted as follows. The writ petitioner moved the writ petition, inter alia, praying for restoring back the possession of his land taken over by the respondents/contemnors herein. The Hon'ble Justice Protik Prakash Banerjee (as His Lordship then was), upon hearing the learned advocate for the petitioner and upon recording non representation of the respondents despite several opportunities, was pleased to dispose of the matter, inter alia, directing the respondents restore the possession of L.R. Plot No.2287, Khatian No.86, J.L. No.38, Mouja Parul, Arambagh Police Station, Hooghly with a further direction that the writ petitioner be put into possession of the concerned land within a period of 72 hours from the date of communication of this order. Despite due communication and full knowledge of the order of the Court since the order was not complied with the instant contempt petition had been filed. Vide solemn order dated 20.09.2019, contempt rule was issued against contemnors nos. 1 and 5. Rule/Subpoena was duly served (as per report dated 20.11.2019). Affidavit of alleged contemnors nos.1 and 5 was submitted (affirmed by one Indranil Chakraborty, Special Land Acquisition Collector, Hooghly, Contemnor no. 2). It was well settled proposition that in a contempt proceeding rule had to be answered by the concerned contemnors individually. None other than the

contemnor himself could answer the rule. It appeared that from the affidavit of Mr. Manoj Pant, the then Principal Secretary and Land Reforms Commissioner, affirmed on 18.11.2019, he was duly apprised of the order of the Hon'ble Court. It further appeared that Agri-Irrigation Department (AI) Arambagh, AI Sub Division, at present under Water Resources, Investigation and Development, Government, of West Bengal at some point of time had taken over i) the possession of 22 dec. of land within which a submersible pump was set up in 03 dec. of land and ii) an office structure was built over rest 19 dec. of land of the same plot, started supplying irrigation water since 31.01.1964. The suit land was neither acquisitioned nor any proposal for acquisition. Till date no proposal for acquisition or direct purchase of suit land had been made. Paragraph 6 of the aforementioned affidavit would amply demonstrate the non application of mind and mechanical approach. No sincere apology had been tendered nor any whisper was there as to how the order had been complied. It appeared from the affidavit affirmed by contemnor no.2 that he had also admitted that there was neither any acquisition nor any proposal for purchase was ever initiated and 22 decimals of land had been taken in 1964. The order passed by the Hon'ble Justice Jayanta Kumar Biswas in the earlier writ petition was also not complied with. In respect of the order under contempt the District Magistrate sought for advice from the contemnor no.1, but no response/step had been taken so far. In the order under contempt a liberty had been granted to the writ petitioner to renew his prayer(s) for compensation in a separate proceedings. But until the possession of the suit land was handed over to the petitioner

and he was restored back the peaceful and vacation possession such a situation did not arise. Again an affidavit had been affirmed on 24.04.2023 by one Prabhat Kumar Mishra claiming himself to be the Principal Secretary of Water Resources Investigation and Development Department, Government of West Bengal. From the said affidavit it appeared that a volte face stand had been taken by him in as much as in paragraph no.4 it had been contended that the State had never been nor was in possession of the entire area of 22 decimals. On the contrary, the State had only been in possession of 17.45 decimals of land. Such statement was wholly untrue. The statements made by the contemnor nos. 1 and 2 as also the documents disclosed by them ran counter to the statement made by the contemnor no.3. The statements made by contemnors 1, 2 and 3 could not stand together. A statement in despair had been made in paragraph no.9 of the said affidavit wherein it had been sought to be contended that petitioner had made suppression of material fact in as much as the petitioner had sold certain portions of land by two different deeds of conveyance. The petitioner sold a portion of his other lands which had no connection with the suit land. A bare perusal of the deed of conveyance and comparison of the plots of lands shown by the petitioner in his affidavit affirmed on 21st August, 2023 would amply demonstrate that a desperate false statement had been made to mislead the Hon'ble Court. It was a settled proposition that when a statutory authority disclosed a particular reason or stand by way of affidavit or any order the same could not be supplemented by fresh reasons in the shape of affidavit or otherwise. As per Article 215 of the Constitution of India, the

High Court being a Court of record had all the powers of such a Court including the power to punish for contempt of itself. The respondents had filed an application for appropriate order by recalling the order dated 31.07.2018. In the said application it had inter alia been contended that due to some inadvertence on the part on the learned advocates they could not be present at the time of hearing. Such a plea was vague and not at all acceptable in as much as inadvertence might be caused once and not in recurrence. In the order under contempt, it had been recorded in no uncertain terms that despite several opportunities and adjournments, the State of West Bengal had chosen not to appear and file any opposition in spite of the Court's order. It was a settled proposition that in absence of any rebuttal or if the allegations remained uncontroverted or absence of opposition the statements made in the petition would be taken to be true. Moreover, once a proceeding had come to an end the same could not be reopened subsequently by way of filing a miscellaneous application. In the instant case it would appear from paragraph no.2 (h) of the CAN No.6303 of 2018 that the application was filled only after coming to know that a contempt application had been taken out. Such filing of application was a calculated move to get rid of the shackles of contempt. The writ petitioner denied the contentions of respondents made in the application. It would appear from the order dated 15.12.2022 that the Hon'ble Court had come to a definite finding that the recalling application could not be treated as an application for review as the necessary requirements for the same were not satisfied.

3. Learned counsel for the alleged contemnors first submitted as follows. The alleged contemnors/respondents had utmost regard and respect for the solemn order/orders passed by the Hon'ble Court and had not wilfully and or deliberately violated the solemn order passed by the Hon'ble Court. By solemn order dated 31st July, 2018, this Hon'ble Court was pleased to dispose of the writ petition by directing the respondents, inter alia, to restore possession of L.R. Plot No.2287 in Mouza Parul, Arambagh Police Station, Hooghly with a further direction that the writ petitioner be put into possession of the concerned land, within a period of 72 hours from the date of communication of the order. The writ petitioner claimed to be the owner of 22 decimals of land in the concerned L.R. Plot. Though the writ petitioner had claimed on more than one occasions that the State was in possession of the entire 22 decimals of land, the fact was that the State had never been nor was in possession of the entire area of 22 decimals. On the contrary, the State had only been in possession of 17.45 decimals of land. Though, in the instant proceeding the State had earlier affirmed an affidavit stating that they were in possession of 22 decimals, as it was reiterating the contention of the writ petitioner in the writ petition and in the contempt application, but in reality the State was in possession of 17.45 decimals. The deep tube well and pump house, occupying an area of 3 decimals, was for the benefit of the farmers in the locality and served the irrigation of farm land of an area of 48 hectares belonging to approximately 300 farmers. The deep tube well was constructed on the basis of requisition of farmers including the writ petitioner and such fact had not been negated by the writ petitioner. For

effective benefit to the farmers, it was also necessary that the deep tube well was inspected on a regular basis and maintained to run efficiently. That was only possible if access was provided through the open space. It had been purportedly alleged that the contemnors had not taken any steps to purge the contempt. This contention was specifically refuted as the State had categorically made its stand clear that in compliance of the solemn order of the Hon'ble Court the State was willing to handover the bungalow, garage cum store and open space amounting to 14.45 decimals, with a request to utilise the open space, to use the same for access to the pump house which occupied an area of 3 decimals. The area, in which the pump house was located, was not claimed by the writ petitioner at any prior point of time and in fact in the first writ petition which had been filed in the matter being W.P. No. 5672 (w) of 2005 it was a specific stand of the writ petitioner, specifically paragraph 3 thereof, that it was willing to give this land free of compensation to the State. It was further respectfully submitted that there had been no deliberate or wilful violation of this Hon'ble Court's order, since, if the area covering the deep tube well was handed over, it would result in sufferance of innumerable farmers. It is thus reiterated that the State was ready and willing to hand over 17.45 decimals of the land excluding the area of 3 decimals wherein the deep tube well was located including the area for ingress and egress of the same.

4. Learned counsel for the State finally relied on an Inspection Report and further submitted as follows. In compliance of the Order dated 16.01.2024 passed by this Court in WPCRC 272 of 2019 in connection with

W.P.A. No. 30720 of 2024, CAN 1 of 2018 (Ashoke Kumar Sinha – Vs – The State of West Bengal & Ors.) followed by the subsequent order dated 13.02.2024 wherein the Court had fixed the date of Joint Inspection on 28.02.2024, an inspection was done on the scheduled land in presence of the petitioner, the officials of this Department and the BL&LRO, Hooghly. The joint inspection report was duly signed by the petitioner and all the officials present during the inspection work. The following facts emerged from the Joint inspection report. The land identified measuring 17.50 decimal or 0.1750 acres appertaining to L.R. Plot No.2287 (R.S. Plot No. 1833), Khatian No. 86, J.L. No. 38, Police Station, Arambagh was duly measured and demarcated which was under the possession of Water Resources Investigation and Development Department. Apart from 17.5 decimal of land as identified and demarcated during joint inspection, there was no land in possession of the Water Resources Investigation and Development Department in the said L.R. Plot No. 2287 (R.S. Plot No. 1833) of mouza Parul J.L. No. 038 under Arambagh P.S. A deep tube well and related structures and an inspection bungalow called “NEER BHAWAN” were present in all that parcel of land measuring 17.50 decimal or 0.1750 acres. A sketch map was drawn showing the details of 17.50 decimal of land shown as A-B-C-D attached hereto was under the possession of the Department of Water Resources Investigation and Development, West Bengal. Prior to this, as per direction of this Court in Order dated 16.01.2024, an inspection was done on 24.01.2024. The aforesaid inspection was done in presence of officials of this Department and representations of the BL&LRO, Arambagh, Hooghly. It was

noted in the aforesaid report that, in spite of several efforts to serve the notice to Sri Ashoke Kumar Singha, Son of Late Moni Bhushan Sinha, resident of P.C. Sen Road, Santrapara, Ward No. 3, Arambagh, Dist.- Hooghly, PIN- 712601 for joint inspection of 24.01.2024 at 12.00 noon at the specified location, neither he nor his representative was present at the site. The notice was sent through speed post and e-mail on 19.01.2024. The hard copy was also sent through a special messenger at his resident, but the person who was present at his residence at that time refused to receive the letter on the very same day. After the Inspector-in-Charge, Arambagh Police Station, Arambagh had been informed in detail vide Memo. No. 28 dated 19.01.2024 of the Assistant Engineer (A-I), Arambagh (A-I) Sub-Division, Arambagh, Hooghly and was requested to serve the letter to the petitioner. But, neither Sri Ashoke Kumar Singha nor his representative nor his surveyor had been present on the date of joint inspection. For compliance of the direction of this Court, the Department was willing to handover the land measuring about 17.50 decimals of L.R. Plot No.2287 (R.S. Plot No. 1833), Khatian No. 86, J.L. No. 38, P.S. Arambagh, to the petitioner.

5. I heard the learned counsels appearing on behalf of the parties and perused the applications, the order in question, the writ petition, the affidavits and the reports.

6. It is abundantly clear that a final order was passed by this Court directing the alleged contemnors to handover possession of 22 decimals of land to the writ petitioner. It is also true that there is an affidavit filed by the respondents earlier which stated about taking over of 22 decimals of land.

7. However, it has subsequently been clarified in another affidavit that actually the State had taken over and was in possession of 17.45 decimals of land only. In fact, upon subsequent measurement the land was found to be of 17.5 decimals. The said land contained an area of about 3 decimals with house, deep tubewell and a pump house which was being used by numerous local residents. The earlier declaration would have assumed greater importance had the subsequent inspection by competent authority in presence of all interested parties not shown that the State was, in fact, in possession of 17.5 decimals of land only.

8. In other words, whatever might have been inadvertently or negligently or in a different context averred in an earlier affidavit, the subsequent affidavit containing an averment that the State was in possession of lesser quantity of land is supported by the last inspection done pursuant to this Court's order.

9. This Court cannot exercise its contempt jurisdiction to ask the alleged contemnor to do a thing, which is quite an impossibility. As the State is purportedly in possession of 17.5 decimals of land that was taken over from the petitioner, this Court cannot compel the State to return more land than that to the petitioner.

10. The other hurdle existing earlier was a stand taken by the State that the land in question could be returned except for the area of 3 decimals that contained the deep tubewell, a pump house and was meant for benefitting the local residents. In its final report and submissions, the State has made it

clear that the entire piece of 17.5 decimals of land would be returned. Therefore, the above referred hurdle gets overcome.

11. It has been the further contention of the applicant petitioner that if the land is returned, then it has to be given back in its original condition that is to say, upon demolition of the existing structures built thereon. The State has not contested such prayer.

12. In view of the above and in the interest of justice, let the said respondents/alleged contemnors demolish the structures brought up on the said land comprising of 17.5 decimals within 6 weeks from the date of communication of this order. Simultaneously at the completion of such demolition work, the alleged contemnors shall again measure the land and hand over the vacant land purportedly comprising of 17.5 decimals to the applicant petitioner in the contempt application as compliance of the order dated 31.07.2018 passed in WPA 30720 of 2014.

13. With the above observations and directions, the application for contempt and the connected miscellaneous application are disposed of. Rule is discharged.

14. There shall be no order as to costs.

15. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)