21.02.2024
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WPLRT 25 of 2024
Gopal Chandra Sardar & Another
– Versus –
The State of West Bengal & Others

Mr. Subhabrata Datta,
Mr. Debashis Sarkar
... for the Petitioners.
Sk. Md. Galib,
Ms. Sujata Mukherjee
... for the State/Respondents.

Affidavit-of-service filed by the petitioners be kept on record.

Questioning the sustainability of the order dated 19th February, 2024 passed in Misc. Application being M.A. 199 of 2024 preferred in connection with the Original Application being O.A. no. 61 of 2024, whereby the learned Tribunal rejected the petitioners' prayer for interim order, the instant writ petition was instituted.

Shortly put, the facts require to be adumbrated for the purpose of effective disposal of this writ petition are that the petitioners inherited the subject plot of land upon demise of their father. In record of rights, the subject plot of land was recorded as '*Doba*' (Small pond). On an enquiry conducted by the Revenue Officer concerned it was found that the said plot of land was converted to '*Bastu*' land and accordingly, a proceedings under Section 4C(5) of the West Bengal Land Reforms Act, 1955 (in short, the Act of 1955) was initiated by the concerned Block Land & Land Reforms Officer. During pendency of that proceedings one writ petition being WPA (P) 83 of 2023 (public interest litigation) was moved before this Hon'ble Court which was disposed of by a co-ordinate Bench of this Court by an order dated 16th October, 2023 directing the prescribed authority to conclude the proceedings initiated under Section 4C(5) of the Act of 1955 with a further direction that if it is found that the land was illegally converted then the persons who are responsible for such illegal conversion, shall be directed to restore the same to its original position.

In pursuance of the said order, the prescribed authority took the matter being the proceedings initiated under 4C(5) of the Act of 1955 for further consideration and in order dated 30th January, 2024 passed in connection with the proceeding, it was, *inter alia*, observed that despite being so directed, the petitioners did not remove the unauthorized construction and consequently, the Assistant Engineer, PWD (Civil), Kakdwip was directed to remove the unauthorized construction within three weeks from date.

In the midst thereof, the petitioners preferred an application seeking review of the order dated 16th October, 2023 passed in the public interest litigation, being WPA (P) 83 of 2023, which was disposed of by an order dated 1st December, 2023 holding, *inter alia,* that there was no error apparent on the face of the record and there was no ground to exercise the review jurisdiction. However, it was ordered therein that it would be open to the applicants to raise all the issues before the concerned authority.

Pursuant thereto, the petitioners filed a comprehensive representation before the competent authority contending, *inter alia,* that from the tax receipt issued by the concerned gram panchayat in 1980, it would be explicit that before the West Bengal Amendment Act, 1981 came into force in 1986 the land was converted to 'Bastu' land and hence, prayer was made to invoke the Rule 166 of the West Bengal Land Reforms Manual, 1991 (in short, manual, 1991) for grant *post facto* approval of the conversion.

The tax receipt was forwarded to the concerned panchayat authority for its verification and the petitioners were also asked to submit auxiliary documents to support their claim. Ultimately, by passing an order dated 26th December, 2023, the competent authority observed that the authenticity of the tax receipt cannot be sustained as it was not supported by any cogent evidence either implicitly or explicitly.

Challenging the said order passed by the Additional District Magistrate & District Land & Land

Reforms Officer concerned the petitioners preferred the original application, being O.A. 61 of 2024. Since a direction was given upon the competent authority to remove the construction standing on the subject plot of land within a period of three weeks from the date of the passing of the order dated January 30, 2024, the petitioners preferred a Misc. Application, being M.A. 199 of 2024 seeking interim order of stay of the order dated 30th January, 2024. By an order dated February 19, 2024, the petitioners' prayer for interim relief has been turned down. Aggrieved thereby, this instant writ petition has been preferred.

Mr. Datta, learned advocate appearing for the petitioners strenuously contends that the authenticity of the tax receipt stands admitted in view of the memo dated 21st December, 2023. He submitted that the tax receipt is a 30-year old document and hence, in terms of the provisions of Section 90 of the Evidence Act, 1872 the authority concerned was required to presume that the said document is valid. To invigorate such submission, he refers to the decisions rendered in the judgments in *Iqbal Basith and Others Vs. N. Subbalakshmi and Others*, reported in (2021) 2 SCC 718 and *Dr. Utpal Sharma Vs. Akshay Pant & Others*, reported in 2018 SCC Online Cal 15362.

He submits that since the competent authority is going to demolish the construction standing on the subject plot of land, immediate intervention of this Court is warranted. He asserts that in the original application and its connected application, the petitioners have made out a good arguable case and the balance of convenience and inconvenience tilts in favour of the petitioners and unless the interim order, as prayed for, is granted, they shall suffer irreversible loss.

Md. Galib, learned advocate appearing for the State respondents denies and disputes the contentions of Mr. Datta. He submits that the petitioners have not approached the court with clean hands and as such, the interim order had rightly been refused by the learned Tribunal.

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

On perusal of the order impugned in the writ petition, it transpires that the learned Tribunal refused to interfere with the order dated 30th January, 2024 which had been passed in terms of the order passed by the Hon'ble Co-ordinate Bench of this Court in the public interest litigation i.e. in WPA (P) no. 83 of 2023. There is no denial on the part of the petitioners that on enquiry it revealed that the land was converted without taking permission from the competent authority which would be evident from the Memo. no. 209 dated

10.04.2023 (Annexure-P/4). The order dated 16.10.2023 passed in WPA(P) 83 of 2023 indicates that the petitioners have constructed a building on the plot and running hotel business from that building. It is episodic to observe that from the order dated 30.01.2024 passed in the proceeding under Section 4C(5) of the Act of 1955, it is quite vivid and luminescent that the petitioners did not remove the unauthorized construction within the stipulated period of time and consequently, the prescribed authority has taken steps to get the construction removed and restore the land to its original position in terms of the direction given in WPA (P) 83 of 2023.

In terms of the order dated 01.12.2023 passed in review application, the petitioners made a comprehensive representation before the competent authority. The petitioners had also made application in Form-1A seeking conversion of the land from 'Doba' to 'Hotel'. Since, the land was already converted, application placed in Form-IA was rejected. Thereafter, a proceeding under Rule 166 of the West Bengal Land Reforms Manual, 1991 came to be commenced and by passing an order dated 26.12.2023, the ADM & DL & LRO concerned returned a finding that authenticity of the tax receipt could not be sustained as it was not supported by any cogent evidence either implicitly or explicitly and the application of the petitioners was rejected as it had not fulfilled the parameters laid down in Rule 166 of the manual.

Rule 166 of the manual, 1991 lays down that if the land has already been converted and on enquiry, it reveals that the change in use of the land has occurred on the conditions, say, a) in the usual course of nature, or b) has occurred at a time when such change was not unlawful or c) has occurred due to development of the Government or of a local body in the surrounding area, or d) due to urbanization in the surrounding area, then Rule 166 of the manual, 1991 can be invoked. Hence, it prima facie appears that none of the conditions for invocation of Rule 166 of the manual, 1991 has been fulfilled in the case at hand.

The prescribed authority took the proceeding under Section 4C(5) of the Act of 1955 to its logical conclusion in deference to the order passed in WPA(P) 83 of 2023 and the learned Tribunal also making the same observation that the order dated 30.1.2024 was passed in terms of order dated 16.10.2023 passed in WPA(P) 83 of 2023 has refused to grant interim relief as prayed for by the petitioner. The order dated 30.01.2024 was passed in terms of order dated 16.10.2023 passed in WPA(P) 83 of 2023 which has attained finality. Hence, for the reasons stated above, the petitioners are not entitled to get the interim relief as prayed for and accordingly, the learned has rightly refused to grant such interim relief in favour of the petitioners. We do not find any error, least to say, any patent error of law in the order impugned. The order does not suffer from any jurisdictional error warranting interference of this court.

There is no scintilla of doubt regarding binding effect of the proposition laid down in the judgments delivered in the cases of *Iqbal Basith and Others Vs. N. Subbalakshmi and Others* (*supra*) and *Dr. Utpal Sharma Vs. Akshay Pant & Others* (*supra*) but those are distinguishable on fact.

In such conspectus, the writ petition, being WPLRT 25 of 2024 is, accordingly, dismissed.

There shall, however, be no order as to costs.

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.)**