

16.12.2024
Item No.01
Court No.11
Avijit Mitra

WPLRT 38 of 2024

In re: An application under Article 226 of the Constitution of India;

And

Satadal Bijali
- versus -
The State of West Bengal & ors.

Mr. Gouranga Kumar Das,
Ms. Poulumi Dutta
...for the petitioner
Sk. Md. Galib, Ld. A.G.P.,
Mr. Ayan Banerjee
...for the State respondents

The affidavit of service, along with the accompanying documents relating to the service of a copy of the writ petition upon the private respondents, is hereby taken on record.

In the present writ petition, justification of the order dated 22nd September 2023, issued by the learned Tribunal in Original Application (hereinafter referred to as 'OA') No. 3526 of 2022 has been called in question. In the aforementioned order, the learned Tribunal disposed of the OA by directing the Sub-Divisional Officer, Kakdwip, to dispose of the representation of the original applicant after providing a fair and reasonable opportunity for hearing to all concerned parties and upon perusal all relevant documents in accordance with the law, within a prescribed time-frame.

Mr. Das, the learned counsel representing the petitioner, submits that in relation to the subject land, the petitioner

instituted Title Suit No. 47 of 2022. In connection with this suit, an application was also filed under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908, seeking interim relief. Accordingly, an interim order was passed, restraining the defendants, their agents, servants, and workmen from disturbing the plaintiff's peaceful possession of the disputed property until 21st June 2022. Mr. Das further submits that this interim order has been extended on several occasions thereafter.

He asserts that during the pendency of the suit, the private respondents submitted an application to the concerned authority requesting the annulment of the patta granted to him in 1993. Despite receiving the application, the competent authority took no effective action. However, the private respondents, concealing the fact that a civil suit was pending before a competent court, proceeded to file the OA. He argues that although the pendency of the suit was brought to the learned Tribunal's attention by the petitioner, the Tribunal ignored this fact and improperly referred the issue annulment of patta to the concerned Sub-Divisional Officer for consideration and resolution.

He submits that under Section 49(2) of the West Bengal Land Reforms Act, 1955, a patta can only be cancelled or annulled if it was granted due to a mistake or obtained through fraud, misrepresentation, coercion, or any other wrongful means as specified in this provision. He further asserts that no such incident has occurred that would justify invoking the provisions of Section 49(2) of the Act of 1955. These points were raised before the learned Tribunal, but it overlooked them and illegally

referred the matter to the concerned Sub-Divisional Officer. He contends that this oversight warrants interference with the order challenged in this writ petition.

Mr. Banerjee, the learned advocate representing the State respondents, submits that the issue of annulment of the patta does not fall within the jurisdiction of the Civil Court, as the Civil Court lacks the jurisdiction to adjudicate matters relating to the annulment of a patta. He further submits that the State authorities were not parties to the aforementioned suit, and as such, any interim order passed therein is not binding on the State or its functionaries. According to him, the learned Tribunal rightly referred the matter to the concerned Sub-Divisional Officer for consideration and resolution of the issue of annulment of patta.

The original applicant is unrepresented. In our view, there is no purpose in further delaying the matter, and as such, we are inclined to proceed with examining the merits of the writ petition. Accordingly, we have heard the learned advocates for the respective parties and perused the materials on record.

The L.R. record of rights, as appearing at pages 1 and 52 to the writ petition, suggests that the land appurtenant to the plot no. 649 of Mouza- Herambo-Gopalpur, P.S.- Patharpratima, District-South 24 Parganans which comprises an area of 49 decimals was recorded in Khatian No.1 and the classification of the land was mentioned as 'School'. The Memo. Dated 3.6.2022 issued by the Chairman of the District Primary School Council, Sought 24 Parganans, as appearing at 53 to the petition, indicates that the Herambo Gopalpur Free Primary, a

Government-recognised primary school, is located on the plot no. 649. On the other hand, Annexure -P/1 to the writ petition, as appearing at page nos. 15 and 16 speaks that a patta was granted in favour of the petitioner herein from plot no. 649, out of 49 decimals, 25 decimals of land in case no. 7/P-Pratima/92-93.

As noted earlier, the petitioner filed a Title Suit in the jurisdictional Civil Court, seeking a decree for a declaration of title over 25 decimals of land out of a total of 49 decimals. Thus, the origin of the dispute between the original applicant and the petitioner, which has manifested in both the suit and the present proceedings, can be traced back to the grant of the patta.

Under Rule 20A of the West Bengal Land Reforms Rules, 1965, the Sub-Divisional Officer (S.D.O.) is authorized to make decisions regarding the patta and the eviction of a person in actual occupation of the land. It is important to note that according to the para 209 W.B. L. R. Manual, the S.D.O. can act as a Revenue Officer and exercise the powers conferred on the Revenue Officer under Section 49(2) of the West Bengal Land Reforms Act, 1955.

Therefore, we are of the opinion that the learned Tribunal did not err in referring the matter to the concerned S.D.O. for consideration. The S.D.O. will revisit the issue, taking into account the prayer of the school authority, and must afford the petitioner an opportunity to present his case and submit all supporting documents. It is expected that the concerned S.D.O. will resolve the issue after hearing the submissions of both the

petitioner and private respondents and considering all relevant documents presented by the parties.

We are informed that the time stipulated by the learned Tribunal has already expired. Therefore, we direct the concerned S.D.O. to complete the entire exercise within eight weeks from the date of receipt of a copy of this order.

The petitioner is directed to communicate this order, along with the service copy, within one week from the date of this order

Accordingly, the writ petition is disposed of.

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

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)