

WPLRT 46 of 2024

**Birds Jute and Exports Limited & Anr.
Vs.
Rototron Containers Pvt. Ltd. & Ors.**

Mr. Ratnanko Banerjee, Sr. Adv
Mr. Supratim Dhar
Mr. Arik Banerjee
Mr. Aritra Basu
Mr. Arunabha Sarkar
Mr. Saptanshu Mukherjee
Mr. Tirthankar Nandi
Mr. Debdatta Saha

... For the Petitioners

Mr. Abhrajit Mitra, Sr. Adv
Mr. Soumya Ray Chowdhury
Mr. Satadeep Bhattacharyya
Ms. Sriparna Mitra
Mr. Awani Kumar Roy
Mr. Surajit Biswas
Mr. Arijeet Bera

... For the Respondent no. 1

Mr. Kishore Dutta, Ld. Advocate General
Mr. T.M. Siddiqui
Mr. Mrinal Kanti Ghosh

... For the State

1. The writ petition is directed against an order passed by the West Bengal Land Reforms and Tenancy Tribunal in MA No. 1269 of 2023 (OA No. 1210 of 2022) on 29th February, 2024. In the said proceeding the present writ petitioner has prayed for injunction restraining the respondent no. 1 or their representatives from encumbering or alienating or transferring the property in question. Learned Tribunal refused to pass any interim order in view of the order passed by a Division Bench of this Court in FMAT 583 of 2013 on 15th

May, 2013. This order was confirmed on 21st March, 2023 by this Bench upon hearing the learned counsel for the parties. The learned Tribunal refused to consider the prayer for injunction restraining the respondent no. 1 from raising construction on the land in question. The learned Tribunal in refusing to pass any order has taken note of the pendency of the civil suit being Title Suit No. 42 of 2013 in which the writ petitioner has prayed for recovery of possession in addition to the order passed by the Revenue Officers at different stages and levels, the last of which appears to have been passed in favour of the respondent no. 1. This order is the subject of matter of challenge before the learned LRTT by the writ petitioner.

2. Mr. Ratnanko Bnerjee, learned senior counsel appearing on behalf of the petitioners, has submitted that by reason of the order passed by the coordinate bench and ultimately confirmed by this bench in view of the word 'encumbrance' the respondent no. 1 could not have the right to raise any construction. It is submitted that after it started construction a contempt notice was served upon the respondent no. 1 and the respondent no.1 upon receipt of such notice cancelled the development agreement but continued with the

construction work on its own as claimed. Mr. Banerjee has also referred to the orders passed in a different proceeding being WPLRT 8 of 2017 in which the respondent no. 1 was restrained from changing the nature and character of the land in question or to alienate the same towards stranger till the disposal of the original application.

3. Mr. Banerjee has further referred to an order dated 19th November, 2018 to argue that the coordinate bench observed that the respondent no. 1 shall not effect changes in the nature and character of the property in question unless the respondent no. 3, B.L.L.R.O holds in favour of the respondent no. 4 against the writ petitioner.

4. Mr. Abhrajit Mitra, learned Senior Counsel appearing on behalf of the respondent no.1 submits that in FMAT 583 of 2013 the writ petitioner has, inter alia, prayed for an order restraining the writ petitioner from raising any construction but no such order was ultimately passed. It is submitted that the writ petitioner has not been able to show any right, title and interest over the suit property and did not even pursue the suit for the last 10 years. It is submitted that the report of the ADM, BLLRO clearly established the right of the respondent no. 1 over the property in

question. The petitioner has cancelled the development agreement, which was entered into inadvertently and is raising construction on his own. It is submitted that so long the writ petitioner is unable to establish its right over the property in question, the writ petitioner is not entitled to any relief.

5. The learned Advocate General appearing on behalf of the State of West Bengal has referred to the government order dated 7th April, 2021 issued by the order of the Governor to show that in exercising of the power conferred by section 3 of sub-section 2 of the West Bengal Estate Acquisition Act, the Governor was pleased to declare that 52.7528 acres of land being required for the purpose of the said mill in accordance with the provision of law. However, he has submitted that the mill is not in existence and does not require the said land.

6. The sheet anchor of the argument of Mr. Banerjee appears to be an order dated 21st April, 2023 by which the earlier interim order was confirmed. We do not find from the order admitting the appeal as the order disposing of the appeal on 21st March, 2023 that the respondent no. 1 was restrained from raising any construction. We have also noted in the said order

that the suit is pending since 2013 and the learned Counsel for the parties were unable to inform this Court about the present status of the suit. We have also directed the learned Civil Court, Brasat to dispose of the suit preferably within the period of six months from the date of settlement of the issue. We have also requested the learned Trial Court to pass a peremptory direction in order to making the said suit ready for hearing. We also observed that in the event the suit could not be disposed of within the stipulated time, the present writ petitioner shall be entitled to renew the prayer for extension of the interim order and the same shall be decided by the learned Trial Court after hearing the parties. We did not pass any order restraining the respondent from raising any construction. We have been informed that an application has been filed by the writ petitioner before the learned Trial Court for an order of injunction restraining the respondent no.1 from raising any construction and the said application is still pending.

7. We also do not find any order passed in the earlier proceeding restraining the respondent no. 1 unconditionally from making any construction on the subject land and for all times to come. In fact

the order passed on 19th March, 2018 while disposing of the WPLRT 8 of 2018 (Rototron Containers (P) Ltd. Vs. The State of West Bengal & Ors.) The Hon'ble Division Bench had observed that *"it is also made clear that the petitioner shall not effect changes in the nature and character of the property in question unless the respondent no. 3 rules in its favour. In the event of the respondent no. 3 holding in favour of the respondent no. 4 and against the petitioner, the latter shall be at liberty to pursue its remedy in accordance with law. No option is expressed on the rival claims and all points are left open to be agitated before the respondent no. 3."* The right to make a claim over the land was crystalised in favour of the respondent no. 1 when the District Settlement Officer passed an order on 10th June, 2022. The construction appears to have been made thereafter.

8. Mr. Abhrajit Mitra, learned Senior Counsel, on instruction, has submitted that although the injunction applicatin was fixed on 10th April, 2024, an adjournment was prayed for on behalf of the plaintiff/writ petitioner in view of the pendency of the writ petition.

9. If what is submitted is correct, then we do not appreciate the conduct of the writ petitioner in not

proceeding with the said application as it was open for the writ petitioner in the said proceeding to pray for further relief as claimed in this proceeding.

10. Insofar as the present writ petitioner is concerned, we find that the learned Tribunal was justified in refusing to pass any order in view of the order passed by this coordinate Bench adequately protecting the right of the petitioner. The distinction between the jurisdiction of the Tribunal and the Civil Court has been correctly summarized in the impugned order. However, in view of the fact that an application has been filed for an order of injunction restraining the respondent no.1 from raising any construction work, we direct the learned Civil Judge, (Senior Division), 2nd Court at Barasat to decide the application upon exchange of affidavits preferably within a period of eight weeks from the date of completion of pleadings.

11. In the event no affidavit-in-opposition is filed, the respondents shall file their affidavits within two weeks from date; reply thereto, if any, within two weeks thereafter. The learned Civil Judge shall fix the matter immediately after exchange of affidavits and decide the matter on merits.

12. We make it clear that construction, if any, made in the meantime, shall not create any equity in favour of the respondent no.1. The respondent no.1 shall not advertise or offer the said property or any portion thereof for sale in the meantime. The construction already made shall abide by the result of the injunction application.

13. We have been informed by Mr. Ratnanko Banerjee, learned Senior Counsel for the petitioners that the learned Tribunal has fixed the matter on 2nd July, 2024. We request the learned Tribunal to dispose of the said matter as expeditiously as possible and to proceed with the hearing of the matter on 2nd July, 2024 without granting any adjournment to either of the parties. All parties shall complete their pleadings within four weeks from date. In the event the pleadings are not completed by that time, we would request the learned Tribunal to proceed with the matter without giving any further opportunity to the parties to file pleadings. The learned counsel for the parties have assured that they would not pray for any adjournment on the date fixed.

14. The direction for filing of pleadings in both the proceedings is peremptory.

15. We make it clear that the learned WBLRTT and the learned Civil Judge, before whom the proceedings are pending, shall decide the matter uninfluenced by the observations made in this order.

16. The injunction application shall be disposed of notwithstanding the pendency of the application for amendment of the written statement.

17. We have been informed that the State has also preferred an appeal against the order of the DL&LRO. The pendency of the said application shall not stand in the way of the learned Tribunal in deciding the application filed by the writ petitioner as we have been informed that the State has already filed an affidavit in the said proceeding disclosing all necessary documents in this regard.

18. The supplementary affidavit filed in Court today is taken on record.

19. In view of the above, WPLRT 46 of 2024 stands disposed of.

20. There shall be no order as to costs.

21. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Uday Kumar, J.)

