

05.12.2024
Item No.07
PG
Ct. No.7

W.P.A. 11885 of 2023
Subal Chandra Naskar
Versus
The State of West Bengal & Ors.

Mr. Partha Pratim Roy
Mr. Iresh Paul..... for the petitioner
Mr. Ashim Kr. Ganguly
Mr. Subrata Dasgupta.....for the State

Mr. Amaresh Bag.....for the BSNL

Mr. Rajendra Banerjee.....for the Union of India

1. The petitioner along with his brothers and sisters as plaintiffs filed a suit being Title Suit No. 140 of 1998 before the learned Civil Judge (Junior Division), 6th Court at Alipore praying for declaration of title and permanent injunction.
2. The said suit was decreed on contest by a judgment and decree dated January 29, 2015 thereby declaring that the plaintiffs are the owners of the suit land as mentioned in Schedule-A of the plaint save and except 0.005 acres of land lying in the northern portion of Dag No. 42, Mouza-Gopalpur, Khatian No. 1470 under Maheshtala Police Station in the district of 24-Parganas (South).
3. The plaintiffs also got a decree for permanent injunction restraining the defendants from disturbing the peaceful possession of the declared suit property of the plaintiffs.

The State of West Bengal as well as the 1st Land

Acquisition Collector and the authorities of the requiring body were the party defendants in that suit.

4. The petitioners have filed this writ petition praying for issuance of a mandamus commanding the respondents to demarcate the land of the petitioner, particularly, the unacquired land situated on the aforesaid Dag No. 42.
5. Mr. Roy, learned advocate appearing for the petitioner submits that since the title of the petitioner as well as other owners of the said plot have been declared unless and until the unacquired portion is demarcated and separated from the acquired portion, the owners of the land are facing difficulties in possessing the property peacefully.
6. Mr. Roy further draws the attention of the Court to the recording in the L.R. Record of Rights, wherein the entire Plot No. 42 was recorded initially in the name of BSNL and subsequently, in the name of "Radio Station".
7. Mr. Roy submits that such an erroneous entry in the Record of Rights is also creating problem in the peaceful possession of the petitioner in respect of the property in question.
8. Insofar as the allegation of the petitioner with regard to erroneous entry in the Record of Rights is concerned, it will be open to the petitioner to take appropriate steps in accordance with law before the proper forum.

9. It is not in dispute that challenging the said judgment and decree, an appeal has been preferred by the requiring body being Title Appeal No. 133 of 2018. Though the said title appeal stood dismissed for default, the same has been restored by an order dated May 4, 2024 and the said appeal along with an application under section 5 of the Limitation Act is pending.
10. The relief claimed by the petitioner in this instant writ petition is, in effect, an attempt to execute the decree passed by the Civil Court. Since an appeal is pending against the said judgment and decree, this Court is not inclined to grant the relief prayed for by the petitioner at this stage.
11. Petitioner will be at liberty to approach the appropriate forum in accordance with law.
12. With the above observations, the writ petition stands disposed of.
13. There shall be, however, no order as to costs.
14. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)