

July 15, 2024
Sl. No.15
Court No.9
s.biswas

WPA 15673 of 2024

Barkatullah Khan and others
vs.
Union of India and others

Mr. Sufi Kamal
Ms. Shireen Hossain

... for the petitioners

Mr. Dhiraj Chakraborty
Ms. Indrani Chakraborty

... for the respondent no.1 to 3

1. Affidavit of service is taken on record. None appears on behalf of the respondent No.5
2. The petitioner submits that an appeal is pending before the statutory forum of Joint Secretary, Freedom Fighter & Rehabilitation Division, Ministry of Home Affairs, Government of India. It is with regard to an alleged enemy property situated at 14, Zakaria Street, Kolkata. The property was declared as a vested property with effect from August 3, 1968.
3. One Mst. Begum Bibi was a resident of 14, Zakaria Street. One Sushil Kumar De who owned 13, Kotowali Road in Dhaka, submitted a prayer for exchange of enemy property. He wanted to exchange nine properties situated at Dhaka with four properties of Mst. Begum Bibi. Mst. Begum Bibi also had property at 22A/24A and 24B, Syed Ameer Ali Avenue and 21A Jhautala Road. She migrated to Pakistan. The exchange was allowed amicably. The erstwhile custodian of the enemy

property for India approved an executed the registered deed of indenture on July 22, 1970 towards exchange of properties. The custodian of enemy property for India was the first party, Mst. Begum Bibi was the second party and Sushil Kumar De was the third party.

4. It appears that some civil litigation is going on. A notice was pasted on the wall of the said property asking the occupant either to enter into an agreement or face eviction. Thereafter, a complaint was received from one Faisal Iqbal, inter alia, stating that Nishatullah Khan, the petitioner No.2 was an unlawful occupant of 14, Zakaria Street. It was also alleged that the said Nishatullah Khan was trying to raise an extra floor on the building which was already in a dangerous condition. An inspection was made and it was found that a construction was going on. A letter was issued by the respondent no.3 to the Kolkata Municipal Corporation and the police authorities were also requested to stop such illegal construction. Thereafter the writ petition has been filed with various prayers.
5. The prayers in the writ petition are misconceived. A writ court cannot restrain a statutory authority from proceeding in accordance with law.
6. The petitioners want to submit certain documents before the authority who is hearing the appeal. It

is submitted that the property had been exchanged between Sushil Kumar De and Mst. Begum Bibi. Those documents are at Dhaka. The petitioner requires some time to get.

7. However, the prayer of the petitioner that he wants to substantiate his claim on the basis of certain documents which are available at Dhaka, is allowed for equitable reasons. The petitioner has been occupying the premises for long and he should be given an opportunity to establish his right on the basis of evidence.
8. Under such circumstances, the writ petition is disposed of with direction upon the respondent no.2 to adjourn the proceedings for a period of four months, to enable the petitioner to obtain necessary documents which he wishes to rely on and place his case before the authority on the basis of other documents available.
9. This order shall not be construed as a direction upon the authority to decide the matter in any particular manner. The authority will decide the matter in accordance with law and on the evidence. The petitioner shall also not raise any unauthorized construction. The authority shall fix the date of hearing and intimate the same to the petitioner and the complainant after expiry of four months from date. If the petitioner does not appear before the authority on the date fixed with

available documents, the authority will proceeding in accordance with law, without any further adjournments.

10. Accordingly, the writ petition stands disposed of.

11. All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)