

July 29, 2024
Sl. No.9
Court No.9
s.biswas

WPA 15352 of 2022
With
CAN 2 of 2024

Pradip Hait and others
vs.
The State of West Bengal and others

Ms. Kabita Mukherjee
Mr. Manas Dasgupta

... for the petitioners

Mr. Susovan Sengupta
Mr. Srikanta Paul

... for the State

Mr. Subir Sanyal
Mr. Amul Krishna Samanta
Mr. Subhas Jana
Mr. Arun Kumar Das

... for the added respondent

1. This writ petition has been filed challenging an order dated February 23, 2022 passed by the learned District Magistrate, Purba Medinipur. By the order impugned, the District Magistrate held that the petitioners were encroachers in respect of C.S. Plot No.140 of Mouza Hijalberia, J.L. No.259 under Police Station Tamluk, Purba Medinipur. The reason behind such finding was that in a proceeding under the Land Acquisition Act, the subject land on which the alleged haat was being run, had been acquired in 1958. Reliance was placed on the gazette notification in support of such acquisition.
2. The petitioners contend that they were not encroachers and that they had become owners of

the properties by purchase and also by way of inheritance. Next contention of the petitioners is that a proper show cause notice as required by the Public Land (Eviction of Unauthorized Occupants) Act, 1962 had not been issued.

3. Learned advocate for the State respondents submits that the affidavit-in-opposition filed by the respondent no.3 clearly indicates that the subject land was a vested land. Although the plot has been classified as a haat, the same vested in the State Government long time ago and was recorded in Khatian No.1. The acquisition was made for construction of a bridge over the Sankarara Khal near Hijalberia Haat. The bridge was constructed along with an approach road. The State respondents have denied the ownership of the petitioners and have submitted that the record of rights was not evidence of title.
4. Further contention of the State is that the haat has been running from the premises in question and all local villagers and traders participate. The State Government has denied the allegation made by the petitioners that forceful possession of the land of the petitioners had been taken by the state respondents by the added respondents.
5. Mr. Sanyal, learned advocate appears on behalf of the added respondents and submits that the land

had been vested in the State Government long time ago. The haat was being run from the said premises since long. The petitioners did not have any title over the said land. All the villagers participated in the said haat and had their individual stalls.

6. It has been brought to the notice of the court that a suit has been filed by the added respondents being Title Suit No.58 of 2023 before the learned Civil Judge (Junior Division), Tamluk. The suit is for a declaration and permanent injunction in respect of the haat.
7. The application being CAN 2 of 2024 has been filed for appropriate orders and for injunction upon the added respondents from collecting the rent/charges from the other stall owners.
8. Instead of deciding the applications separately, this court proceeds to deal with the entire issue. The issues which are to be decided in this writ petition along the connected applications, are as follows:
 - a) Whether the order of removal passed by District Magistrate can be sustained;
 - b) Whether the petitioners had been rightly declared as encroachers;

- c) What remedy is available to the petitioners against the order passed by the District Magistrate;
 - d) Whether the writ court can entertain the prayer to injunct the added respondents from collecting the rent/fees;
 - e) Whether the petitioners can assert right, title and interest in respect of the said land, in the teeth of order of acquisition;
 - f) Whether, in the absence of any declaration of any award for such acquisition, the acquisition could be held to be valid and the petitioners would be declared to be encroachers in respect of the land in question.
9. The fact remains that the District Magistrate, Purba Medinipur proceeded under the West Bengal Public Land (Eviction of Unauthorized Occupant) Act, 1962. It is evident from the order impugned that the petitioners participated at the hearing. The District Magistrate relied on a document which was a gazette notification indicating that C.S. No.140 of Mouza Hijalberia was also a part of an acquisition proceeding along with other lands in question. The State respondents have not been able to show before this court whether the award was published or not. However, this is a factual aspect which the

the writ court cannot go into at this stage. The records should be available either in the office of the land acquisition collector or in any other department.

10. Whether the acquisition proceeding was valid or not cannot be decided in this writ petition. This is also an aspect which had to be decided at the appropriate stage, on evidence. The petitioners pray for a declaration that they are not encroachers but have right, title and interest in respect of the land in question. Such declaration may be available to the petitioners in a civil suit.
11. With regard to whether the District Magistrate's order was passed correctly or not, the petitioners are at liberty to avail of the remedy of appeal, in accordance with law.
12. Whether the added respondents can be enjoined from collecting the rent is also a private dispute, which can be decided by an appropriate forum. A suit is also pending. The petitioners may contest the suit. This court notes that at the interim stage, a Co-ordinate Bench had recorded that the bi-weekly haat must continue as the local villagers and traders were involved in the haat, which means that Her Lordship was conscious of the fact that the haat was the source of livelihood for many. Thus, the haat should continue

uninterruptedly. The question who will collect the rent or licence fee from the stall owners, is a disputed question, which can be adjudicated in a suit. Whether the petitioners have any right, title and interest in respect of the land in question, on the alleged ground that no award had been published and the acquisition was not completed in accordance with law, is also a matter which has to be decided in an appropriate proceeding, on evidence.

13. With regard to the order passed by the District Magistrate, the petitioners shall prefer an appeal before the appellate authority and the appellate authority will adjudicate whether the findings of the District Magistrate were justified or not, and accordingly pass orders upon hearing the petitioner. The issue of vesting, non-payment of award pursuant to the acquisition etc. may be gone into by the appellate authority. The civil suit will continue according to law.

14. Under such circumstances, the writ petition along with the application are disposed of.

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

(Shampa Sarkar, J.)