

19.07.2024
Court No.09
Item no.03
CP

WPA No. 16961 of 2024

Anup Bharati @ Anup Kumar Bharati
Vs.
The Government of West Bengal & ors.

Mr. Ramdulal Manna
Dr. Bishnupada Dutta
Ms. Manju Manna
Mr. Sayan Mukherjee

....for the petitioner.

Mr. Malay Singh
Ms. Neelam Singh

.....for the State.

1. The writ petition has been filed challenging an order dated June 10, 2024, passed by the District Magistrate, Purba Medinipur. Such order was passed pursuant to two decisions of the Hon'ble Division Bench in two separate Public Interest Litigations. The allegation was that the petitioner had encroached government land and destroyed the plantations.
2. The writ petition filed by one Dilip Kumar Shyamal being WPA (P) 505 of 2022, was disposed of on October 31, 2022. The respondents were directed to consider the grievance raised in the representation dated September 2, 2022 and take appropriate action.

3. Pursuant to the said order, a notice was issued upon the petitioner by the District Magistrate and Collector, Purba Medinipur on November 30, 2022. The first hearing date was postponed and the next date for hearing was fixed on December 28, 2022. The District Magistrate disposed of the matter as the complainant who filed the writ petition was not before the authority.
4. Challenging the aforementioned disposal without any orders, Dilip Kumar Shyamal again filed WPA (P) 142 of 2023. By an order dated April 3, 2023, the Hon'ble Division Bench set aside the order of the District Magistrate dated December 28, 2022 and directed the District Magistrate to reconsider the petitioner's representation dated September 2, 2022 within a period of three weeks.
5. Pursuant thereto, a notice was issued by the Additional District Magistrate to the Block Land & Land Reforms Officer, Nandigram – II, requesting a joint field enquiry in presence of the complainant and the petitioner. The issues to be determined by the Block Land & Land Reforms Officer are quoted below:-

“1. What is the status/interest of the petitioner in respect of the encroached land.

2. Whether the plots in question is/are govt. Land or not.

3. If govt. land, submit relevant R-O-R and ensure whether there is any encroachment.

4. If there is encroachment, give encroacher-wise specific details of encroachment with land sketch map.”

6. A copy of the aforementioned notice was also served upon the petitioner. On May 17, 2023, the petitioner was issued a notice by the Block Land & Land Reforms Officer, Nandigram – II, asking the petitioner to be present at the field enquiry to be conducted on May 26, 2023 at 10 am. Another notice was issued on July 21, 2023 asking the petitioner to be once again present at the field enquiry in respect of Plot No.749, Mouza – Khodambari, J.L. No. 131. The petitioner was present at the enquiry.

7. A hearing notice was issued to the petitioner by the District magistrate & Collector, Purba Medinipur dated December 22, 2023. At the hearing, the field enquiry report was submitted before the District Magistrate. Another date of hearing was fixed on January 3, 2024. The Divisional Forest Officer, Purba Medinipur, the Executive Engineer, Irrigation and Waterways Department Contai, the Block Development

Officer, Nandigram – II, the Block Land & Land Reforms Officer, Nandigram – II, the Pradhan of Khodambari – I Gram Panchayat and the secretary of the said gram panchayat were present at the hearing. The District Magistrate heard all the parties.

8. The petitioner put forward an objection regarding the measurements taken by the Block Land & Land Reforms Officer. On the other hand, the petitioner submitted a separate measurement sheet prepared by a private surveyor as per the field enquiry report. It transpired from the field enquiry report of the Block Land and Land Reforms Officer that LR Plot No. 749 of Mouza – Khodambari was recorded in favour of the PWD Department and the same was encroached by the petitioner. The area of encroachment measured around 3432 sq feet including a passage of 312 sq feet. The petitioner was the owner of parts of adjacent Plot No. 1189 and 1190 of the same mouza measuring around 9 decimals and 54 decimals respectively.
9. As per the report prepared by the petitioner's surveyor the encroached area was approximately 1200 sq feet.

10. Upon considering such fact, the District Magistrate once again directed the Block Land & Land Reforms Officer, Nandigram – II to demarcate the lands in question in presence of both the parties in order to ascertain the exact area of encroachment made by the petitioner and submit a report. The field enquiry was held once again. The petitioner and his private engaged amin were also present, but they refused to sign the attendance sheet. Both the reports of the Block Land & Land Reforms Officer, Nandigram – II, tallied. The area of encroachment was found to be identical. The petitioner was found to have encroached 3432 sq. ft of Plot No. 749 of Mouza – Khodambari which was classified as ‘Canal Par’ and the same stood recorded in favour of the PWD. 12 stalls had been constructed on the said land. Thus, upon finding such encroachment, the Sub-Divisional Officer, Haldia was directed to remove the encroachment from the land upon following the provisions of the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962 (hereinafter referred to as ‘the 1962 Act’). The petitioner is aggrieved by the said order.

11. As steps were taken under the 1962 Act, the petitioner has an alternative remedy. Secondly, the disputed questions of fact with regard to the exact area of encroachment cannot be decided by a writ court. Two field enquiry reports indicate that the petitioner had encroached 3432 sq. ft. of the government land bearing Plot No.749 which was classified as 'Canal Par'. The allegation of the petitioner that fixed points were not taken into consideration and a random survey was made, is not supported by the records.
12. The authorities have proceeded on the basis of a direction of the Hon'ble Division Bench. The field enquiry was held in presence of the petitioner. Hearing was given to the petitioner. On the submission of the petitioner that his privately arranged surveyor had found encroachment of around 1200 sq. ft, another field enquiry report was prepared upon taking measurements in presence of the petitioner.
13. Thus, the writ petition is disposed of without any orders. The petitioner is at liberty to take appropriate steps, in accordance with law.
14. The question of judicial review of the concurrent findings of fact does not arise on a

stray allegation that fixed points were not taken during such survey. In any event, such allegation is also not supported by any evidence. The writ court cannot go into such questions as if this proceeding is a civil suit. Moreover, there is no ground for the interference in the absence of any procedural defect or error apparent on the face of record. The writ court cannot venture into a comparative analysis of the respective field enquiry reports relied upon by the parties.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)