

20.2.2024
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Ct. no. 652
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CO 2678 of 2016

Joynab Bibi & Ors.
Vs.
The Collector, South 24 parganas & Ors.

Mr. Sanjib Bandyopadhyay ...for the Petitioners

Mr. Saptak Sanyal ...for the State

This is an application Article 227 of the Constitution of India, directed against an order dated 30th May, 2016 passed by learned Civil Judge, (Junior Division), 2nd Court, Diamond Harbour, in Title Execution case no. 08 of 2009, whereby the learned court below has rejected the decree holders/petitioner's prayer made under Order XXI Rule 32 of the Code of Civil Procedure and thereby dissolved the execution proceeding.

The factual matrix of the case is that one Janab Ali Gayen had some properties and after his death, the Big Rayat case being no. 70 of 1969 was started against the legal heirs of said Janab Ali Gayen. The present petitioners are the descendants of one Sahajamal Gayen who was the son of Janab Ali Gayen. The petitioners contended that the land held by Sahajamal Gayen was well within the ceiling limit and it included both agricultural and non-agricultural land

but some lands were declared arbitrarily as vested under Estate Acquisition Act, 1953, in the said Big Rayat proceeding. Being aggrieved, the petitioners filed aforesaid Suit being no. 455 of 1985 before the Diamond Harbour court for declaration of title and permanent injunction against the opposite parties. The Trial court after hearing the parties, passed the judgment and decree dated 23.4.1991, whereby the plaintiff's title in the "Ka" and "Kha" schedule property was declared and the opposite parties/state were permanently restrained from disturbing plaintiff's possession in the suit property.

It is further submitted that the opposite parties herein did not prefer any appeal against the said judgment and decree but in spite of said judgment, opposite parties have not corrected the record of rights. The petitioners approached before the authorities for correction of Record of Rights but they did not pay any heed to such request. Accordingly, the petitioners herein filed writ petition being W.P. 28538 (W) of 1987 and this Court while disposing of the said writ petition, was pleased to direct the concerned respondents to consider the representation of the petitioners herein and to pass a reasoned order. After such direction, the concerned opposite parties in terms of the order of the Hon'ble Court, started a Misc. case being no. 1 of 1998 but after hearing the parties, the concerned respondent

authorities dismissed the petitioner's representation for correction of record of rights.

The petitioners filed application being OA no. 1041 of 2001 before the learned West Bengal Land Reforms and Tenancy Tribunal (hereinafter referred to as WBLRTT) for correction of record of rights in terms of the said order passed by the learned Civil Judge, (Junior Division), 2nd Court, Diamond Harbour, in Title Suit no. 455 of 1985. Learned WBLRTT by an order dated 16th July, 2001 was pleased to dispose of the petitioner's aforesaid application being OA 1041 of 2001 by directing the concerned respondents to pass a reasoned order considering the said order of the learned Civil court. Thereafter, the concerned opposite party/respondent authorities, after hearing both the parties, rejected the petitioner's application.

The petitioners in the meantime filed aforesaid execution case being Title Execution case no. 8 of 2009 for executing the decree passed in aforesaid Title suit no. 455 of 1985. The Petitioners thereafter made an application being OA 1863 of 2012 before the learned WBLRTT. On 17.12.2012, the ld. Tribunal was pleased to dispose of the same by directing the concerned respondent to pass a reasoned order. The concerned authority thereafter started Misc. case being no. 37 of 2013 to comply with the said order of the learned Tribunal. However, it was disposed of against the

petitioner herein. Thereafter, by the impugned order, the execution case was also finally rejected on 30th May, 2016 by the court below.

Being aggrieved by that order, Mr. Bandyopadhyay, learned counsel for the petitioners submits that the court below was wrong in dismissing the execution case deciding the merit of the suit. It is well settled that the executing court cannot go beyond the decree. Merit of a suit cannot be further decided by Executing Court. According to him, after perusing papers and documents, once title is declared by the learned civil court, in absence of preferring appeal against the same, the executing court cannot dismiss the execution proceeding. He further submits that the executing court should have considered that the trial court declared title of the petitioners by considering all aspects of the plots of land of the petitioners. He ought to have considered that the vesting could only be passed if quantum of land exceeds ceiling limit which is not the case here. He further contended that vesting made by the opposite parties and declaration of title passed by competent court are two different things and therefore the nature of entry in the record of rights which were made on the basis of vesting has become redundant, the moment the civil court declared title. Accordingly, Section 57(B)(2) of the West Bengal Estate Acquisition Act, 1953 or other sections referred in the order

impugned have no application in the present context. He further pointed out when permanent injunction has been passed by the court below. So the executing court ought to have executed the said order without considering the merit of the case. Accordingly, he has prayed for setting aside the order impugned.

Learned counsel for the State raised vehement objection and contended that it is true that settled principle of law suggests that the executing court cannot go beyond the decree and executing court is also not supposed to decide merit of the case but if it is found that the court which has passed the judgment lacked inherent jurisdiction to entertain the said suit or to pass any decree thereon, then the decree deemed to have non-est in the eye of law and such decree is not executable. Accordingly, he has prayed that the impugned order is neither perverse nor by dismissing the execution case, the court below has exceeded its jurisdiction and as such, the interference of this court under Article 227 of the Constitution of India is not required in the present context.

In this context, learned counsel for the State has relied upon a judgment of the Apex court in the case of **Brakewel Automotive Components (India) Private Limited Vs. P.R. Selvam Alagappan reported in (2017) 5 SCC 371** and another judgment passed by a co-ordinate bench of this court in the case of **Pranab**

**Kumar Maity Vs. Tapas Kumar Bhattacharya
reported in 2015 (5) CHN (CAL) 405.**

I have considered the submissions made by both the parties. On perusal of the order impugned, it appears that it is an admitted position that the land in question was vested to the Government and thereafter, those lands were distributed to the landless people.

Section 57B (2) of the West Bengal Estate Acquisition Act, 1953 puts an embargo upon civil court to deal with any such question or to decide any such matter which is required to be dealt with by Revenue Officer. In fact when the civil court declared plaintiffs title in the suit properties in T.S. 455 of 1985, the concerned civil court lacked jurisdiction to deal with the legality and validity of vesting order.

In **Brakewel Automotive Components (India) Private Limited Vs. P.R. Selvam Alagappan reported in (2017) 5 SCC 371**, Apex court clearly held in paragraph 20 that where the decree is by a court lacking inherent jurisdiction, the same is rendered non-est and is thus unexecutable.

In such view of the matter, the observation made by the court below in the impugned order, while dismissing the execution case that declaration of title passed by the Trial Court does not encompasses the Misc. proceeding initiated by the authority who has got exclusive right to entertain said application as per

above-mentioned sections enumerated in the West Bengal Land Reforms Act and West Bengal Estate Acquisition Act, is neither perverse nor illegal and as such the interference of this court is not warranted exercising jurisdiction under Article 227 of the Constitution of India, as also I do not find any error apparent on the face of the order.

In view of above, C.O. 2678 of 2016 is accordingly dismissed. However, this dismissal order will not preclude the petitioners from redressing his grievance before the appropriate authority against the order passed in Misc. Case no. 37 of 2013, since the petitioner has wasted time by choosing a wrong forum in ventilating his grievances.

In the event of filing such application before the appropriate authority by the petitioner herein, the concerned authority, treating the same as representation filed by petitioner, shall consider whether there is any substance in petitioner's representation questioning acquisition by Government and whether the authority on whom exclusive jurisdiction has been vested under Section 57B by the statute has acted within the scope and ambit of its jurisdiction or not and will dispose of the same by a reasoned order.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)