

29.08.2024
Item No.25
Court No.11
Avijit Mitra

WPLRT 125 of 2024

In re: An application under Article 226 of the Constitution of India;
And

Buddhadev Ghosh
- versus -
State of West Bengal & ors.

Mr. Jayanta Kumar Das,
Mr. D. Mukherjee,
Mr. Suman Kumar Bhattacharyya,
Ms. Madhumanti Das
...for the petitioner
Mr. T.M. Siddiqui, Ld. A.G.P.,
Ms. Debdooti Dutta,
Mr. S. Adak
...for the State respondents
Mr. Saunavo Basu
...for the respondent no.7

An affidavit-of-service as filed by the petitioner be taken on record. Despite service, none appears to represent the private respondent no.6.

This writ petition has been filed seeking a judicial review of the order dated August 5, 2024, passed in MA 797 of 2024, which was preferred in connection with OA No. 1749 of 2024.

Mr. Das, learned advocate representing the petitioner, submits that the petitioner has sought the intervention of this Court through this writ petition because the learned Tribunal refused to grant an interim order, citing that the petitioner had failed to make out a case for such an order.

He elaborates on the issue, contending that the petitioner and private respondent No. 7 purchased the land in question in 1991 and have been in possession of it since then. Their names

were recorded in the record-of-rights based on their application. Subsequently, private respondent No. 6 began claiming to be a co-sharer of the land, based on a deed of sale allegedly executed in her favour in 1994. She filed an application under Section 144 of the Code of Criminal Procedure, which was registered as M.P. Case No. 153 of 2019.

He contends that, in the meantime, the private respondent No. 6 has filed a partition suit vide. No. 89 of 2019 seeking partition and separate possession of her share. She had also filed a statutory appeal under Section 54 of the West Bengal Land Reforms Act, 1955, before the appellate authority to challenge the order based on which the names of the petitioner and private respondent No. 7 were recorded in the record-of-rights.

He submits that the appellate authority accepted her appeal, set aside the order of the Block Land and Land Reforms Officer, and remanded the matter to the B.L. & L.R.O. with a direction to record her name in the record-of-rights for the land.

Aggrieved by the order of the appellate authority, the petitioner presented the OA 1749 of 2024 before the learned Tribunal. He submits that by preferring an application in connection with the OA, the petitioner prayed for interim order. The learned Tribunal refused to grant the interim order with an observation that the applicant failed to prove his prima facie case at that moment, the balance of convenience and inconvenience was not in his favour.

He contends that the learned Tribunal has fixed the next date of hearing of the OA on July 9, 2025. He apprehends that, if the order of the appellate authority is implemented in the

meantime or if the petitioner is dispossessed from the land, he will suffer irreparable loss. He submits that interim protection should be granted to the petitioner until the learned Tribunal resolves the issue.

Mr. Siddiqui, learned Additional Government Pleader enters his appearance on behalf of the State.

Mr. Basu, learned advocate enters his appearance on behalf of the respondent no.7 and supports the petitioner's case made out in the writ petition.

Heard the learned advocates appearing for the respective parties and perused the materials on record.

An examination of the sequence of events reveals that the names of the petitioner and private respondent No. 7 were recorded based on a registered deed of sale executed in 1991. Private respondent No. 6 instituted a partition suit seeking partition and separate possession of her share of the land, claiming co-ownership based on a deed of sale executed in her favour in 1994. Meanwhile, the appellate authority issued an order directing the B.L. & L.R.O. to record the name of private respondent No. 6 in the record-of-rights. This order has been challenged before the learned Tribunal in OA No. 1749 of 2024. The learned Tribunal has refused to grant an interim order and has fixed the next date of hearing of the OA on July 9, 2025.

Therefore, it prima facie appears that the petitioner has established that he and private respondent No. 7 purchased the land before private respondent No. 6, and their names were recorded in the record of rights as they are in possession of the land. Admittedly, private respondent No. 6 has filed a partition

suit. Hence, if the entries in the record of rights are altered in accordance with the order of the appellate authority, which is also under challenge in the OA and before the co-ownership of private respondent No. 6 is recognized and her share in the land is declared by the competent Civil Court of law, both the petitioner and private respondent No. 7 would suffer significant prejudice. Moreover, if the petitioner is dispossessed from the land, he shall suffer irreversible loss.

We have given careful consideration to the submissions made by the respective parties and have perused the documents. We are of the view that the petitioner has presented a strong arguable case in his favour that should be decided on its merits. Additionally, it should be noted that if the interim order, as prayed for, is not granted, it may lead to further litigation and complications.

In such conspectus, we dispose of the writ petition by directing the parties hereto to maintain *status quo* with regards to the nature, character and possession of the property in question as on date and the operation of the order of the appellate authority shall remain stayed till the disposal of the OA 1749 of 2024.

With the above observations and directions, the present writ petition is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty, J.)