

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 34408 of 2013
Ghanashyam Dey & Ors.
Vs.
The State of West Bengal & Ors.

For the petitioners : Mr. Uday Narayan Betal
Mr. Bhaskar Hutait

.....Advocates

For the State : Mr. Supratim Dhar

.....Advocate

Heard lastly on : 05.02.2024

Judgment on : 03.05.2024

Jay Sengupta, J:

1. This is an application praying for direction upon the respondent authorities not to construct a school building for Pandit Raghunath Murmu Adarsha Abasik Uchcha Vidyalaya, Plot No.106, Mouza – Ratulia, Medinipur, J.L. No.126, Police Station – Panskura, District – Purba Medinipur.

2. Learned counsel appearing on behalf of the petitioners submits as follows. Out of total 15.90 acres in R.S./L.R. Plot No.106 of Mouza: Ratulia, Medinipur, J.L. No.126 within Police Station Panskura, District Purba Medinipur, demarcated land measuring 96 decimals was granted to the predecessors in interest of the petitioner Nos. 1 to 16 by an Amalnama dated 19.02.1946 by the then superior landlord. By the said Amalnama adjoining to the aforesaid land another 38 decimals in Plot No. 1011 had been granted to the predecessors in interest of the petitioner Nos. 1 to 16. The said land of 96 decimals in Plot No. 106 and 38 decimals in Plot No. 1011 had been duly recorded in the names of predecessors in interest of the petitioner Nos. 1 to 16 in R.S. Record of Rights under Khatian No.325. Since the respondent State authority without due process of law and by forcibly dispossessing the petitioners from their demarcated land in Plot no. 106 and other patta holders being the recorded raiyats, tried to established a School building on the land measuring about 8.95 acres alleged to be vested land to the State under the West Bengal Estate Acquisition Act, 1953, the petitioners and others recorded raiyats moved the present writ petition. However, for the reasons best known to them, except the writ petitioner Nos. 1 to 16, the other petitioners withdrew themselves from the present writ petition. By an order dated 27.01.2024, this Court was pleased to pass an order restraining the respondent authorities from making any construction or further construction for a period of eight weeks or until further order or orders. By an order dated 03.04.2014, the said interim order was extended till disposal. An application being CAN 7922 of 2014 affirmed on 06.08.2014 for vacating the said interim was filed by the State Respondents. The application was

incomplete for the following reasons. Although in para 10. a) of the said vacating application the State respondents referred to a letter being No.165/PMZP/SDPT/06 dated 05.07.2006 of Sabhadhipati, Purba Medinipur Zilla Parisad addressed to the Commissioner/Director of Secondary Education Department, but the enclosures to the said letter had not been annexed. In paragraph 10. b) the respondent mentioned about a letter being No.4-SE(S)/C.S.-50/2005 dated 20.01.2008 of the State Government and thereby allegedly annexed the same as annexure 'F', but no such letter was annexed. Although in paragraph 10. c) of the said vacating application in annexure 'G' therein the concerned respondent allegedly annexed a Memo. No.939/BCW/P-MID dated 19.09.2005 of the District Magistrate, Purba Medinipur and letter No.1084/BCW/P-MID dated 30.11.2005 of the backward Class Welfare Officer at Purba Medinipur and by referring the said letter the said concerned respondents referred to a site plan for the proposed school on the vested land in the said plot measuring 8.95 acres, but astonishingly enough no such annexure 'G' was available in the said vacating application and instead thereof a letter dated 06.02.2014 of the learned advocate of the petitioners was appearing in annexure 'G'. Although in paragraph 10. d) – 10. m) the concerned respondent allegedly annexed several letters and correspondences from annexure 'H' to annexure 'O', but surprisingly enough no such annexure was available after annexure 'G'. Therefore, the writ petitioners were unable to deal with those paragraphs including contents. An application for vacating of interim order being CAN 7922 of 2014 and other CAN 7109 came up for hearing. On 11.09.2015 the names of the writ petition Nos. 19, 22 and 26 to 32 were expunged. By the

said order, the said vacating application being CAN 7922 of 2014 was also disposed of by permitting the construction of the school building to be taken up continued and completed notwithstanding the pendency of the writ petition without prejudice to the rights and contentions of the surviving petitioners and thereby, only to decide the issue whether the construction of the school was on any part of the surviving petitioners' land or otherwise, the concerned Land and Land Reforms Officer was directed to prepare a sketch map with the help of a surveyor and to file a report within four weeks identifying the plots on which construction of School was being made. For modification of that recording, an application being CAN 10301 of 2015 was filed by the writ petitioner nos. 1 to 16 and the said application came up for hearing on 15.01.2016. This Court was pleased to dispose of the said application, inter alia, holding that such order did not dispense with the formalities necessary for the purpose of acquisition in accordance with law and thereby, inter alia, further held that since notwithstanding the order dated 11.09.2015 the State or the appropriate authorities had to initiate formal steps in accordance with law for the acquisition of any part of the petitioners' land on which the construction had been permitted. Pursuant to the said order dated 11.09.2015 passed by this Court the concerned B.L. & L.R.O. by its report dated 10.12.2015 indicated a portion of land allegedly belong to the writ petitioner nos. 1 to 16 which was near about 300 ft away from the existing National Highway VI, whereas as per their Amalnama dated 19.02.1946 their said 96 decimals of land situates adjacent to the National Highway at the northern side of the said land nearby to a bridge on the National Highway earlier named as Cuttak Road. It appeared that only

the boundary wall had been fixed up and inside therein some digging had been completed and in the said report it had been purportedly alleged that there was no proof of possession of any land inside the boundary wall. As per the petitioners, as forcible possession of their lands had been taken thereby constructing boundary wall after digging therein, mud had been staged for construction of the school. As such, there ought to be no cultivation by the petitioners. In the said report, it was further alleged that in spite of attending the survey work on 28.10.2015 the petitioners declined to sign in the attendance. By an affidavit dated 11.02.2016, the writ petitioners categorically took exception to the said report and thereby specifically stated therein that twice physical enquiry had been conducted on 09.10.2015 and 26.10.2015 and on 09.10.2015, petitioners were present and signed on the attendance sheet for physical enquiry and thereby after survey a sketch map was prepared which the petitioners noticed and on the said date 96 decimals of the petitioners' land in said Plot No.106 as per their Amalnama of 1946 was duly identified in presence of them and the said B.L. & L.R.O. as well as others and thereby following their Amalnama a sketch map was prepared, but in spite of that the said B.L. & L.R.O. did not serve the petitioners, the attendance-sheet and a copy of the said report along with sketch map prepared on 09.10.2015. In the said affidavit dated 11.02.2016, the petitioners further annexed an application under Right to Information Act dated 23.11.2015, whereby they had asked for survey copy of the map of Plot No.106 conducted on 09.10.2015 along with the attendance sheet and other related document prepared on that date and most surprisingly in the reply dated 18.12.2015 as annexed in the writ

petitioners' said affidavit dated 11.02.2016, the concerned B.L. & L.R.O. admitted the enquiry conducted on 09.10.2015, but said measurement-sheet had already been submitted before this Court and thereby the writ petitioners were advised to collect the same from their advocate and as per the advise the attendance-sheet of 09.10.2015 had been collected by the writ petitioners from the office of the B.L. & L.R.O. upon payment of requisite fees. Although in presence of the petitioners enquiry was conducted and sketch map was prepared whereby the petitioners noticed that their entire 96 decimals of land in the said plot had been utilised for the purpose of construction of the said school, but surprisingly enough that measurement sheet and sketch map prepared on 09.10.2015 had not been given to the petitioners and/or the same had not been annexed with the said report dated 10.12.2015 submitted by the said B.L. & L.R.O. whereas the sketch map annexed to the said report indicated the land of the petitioners situated far away from the land as demarcated and indicated in their Amalnama of 1946. Against the said two orders dated 11.09.2015 and 15.09.2016 the petitioners preferred Mandamus Appeal being MAT 222 of 2016 and MAT 224 of 2016 and upon hearing the said appeal on 20.05.2016 and upon perusing the said report, Their Lordships were pleased to opine that there was a mismatch between the location of the subject land appearing in the Amalnama and diagram which has been annexed to the report of the concerned B.L. & L.R.O. and thereby pleased to direct to file an explanation regarding the anomalies as also their solution which might be proposed, in the form of an affidavit by 20.06.2016 before the said Hon'ble Court. The Court was further been pleased to schedule the

date of spot enquiry on 31.05.2016 and hearing dated 02.06.2016 for that purpose. Pursuant to the said order dated 20.05.2016, the concerned B.L. & L.R.O. again submitted report in the form of an affidavit affirmed on 20.06.2016 thereby annexing another sketch map allegedly indicated the land of the petitioners, but in the said report the concerned B.L. & L.R.O. did not show any document evidencing that the portion on which construction of the school had been made and/or was being made, the said portion had been properly demarcated in accordance with law by the State authority while making a part vesting in a big plot. In the said written objection to the said report these petitioners specifically stated that in the spot enquiry it was found that the total 96 decimals of petitioners land had been covered under the school building within boundary wall raised thereon, as such there could not be any sign of the petitioners possession as on that day. The two Mandamus Appeals came up for hearing on 01.11.2017 before the Division Bench, which was pleased to dispose of the said appeals with a view that the impugned two orders of which the petitioners sought modification in no way took away their right to seek such demarcation and since exception to the report had already taken, Their Lordships had been pleased to dispose of the said two Mandamus Appeals with the observation that this would not prevent the appellants/petitioners from taking appropriate steps for ascertaining the location of the land in accordance with law. Although the State authority was claiming that construction had been raised on the Government Land but no document has been produced before this Hon'ble Court to establish the portion of land on which construction had been raised belong to the State, whereas the

boundaries mentioned in the Amalnama of the petitioners would indicate that the construction had been raised on the portion belonging to the petitioners. In case of part vested land in a big plot provision under Section 10(2) of the West Bengal Estate Acquisition Act, 1953 read with Rule 4 and 7 of the West Bengal Estate Acquisition Rule, 1954 along with procedure enshrined schedule B to the Rule 25 were to be followed particularly clause 6(4)(5) thereof. But, in the present case the State authority did not produce any documents showing that particular land out of the said big plot, on which the School building had been constructed belonged to the State and possession thereof had duly been taken by the State by appropriately demarcating the same by assigning the separate plot number. Therefore, the petitioners should be appropriately compensated in accordance with law.

3. Learned counsel for the State submitted as follows. Before promulgation of West Bengal Estates Acquisition Act, 1953, the land in question i.e. plot no.-106, Mouza – Medinipur Ratulia, J.L. No.-126, area – 15.90 acres, P.S.- Panskura, Dist. – Medinipur (now Purba Medinipur) was recorded in C.S. Khatian No.- 02 (intermediary khatian) where in Pulin Bihari Maity, S/O- Tarinicharan and Nani Bala Dashi, W/O-Sashi Bhusan Maity in terms of equal share. Land was vested in the State after conjoint operation of Section 4 and 5 of the W.B.E.A. Act and the raiyats and under raiyats of the tiller of soil was recorded as raiyat under Rule 4 of the W.B.E.A. Rules. During preparation of R.S. Record, the land in question was recorded in the name of Khudiram Chakravorty, S/O-Gopal and Jamini Bala Dashi, W/O-Pramathanath Ghosh who were also the intermediary and they allegedly settled 0.96 acres of land in favour of Gopal Dey, S/O-

Krishnachandra and Bhuban Chandra Paul, S/O- Saday by virtue of unregistered Amalnama which was purportedly created on 29.03.1947 in contravention with Section 26C of Bengal Tenancy Act, 1885. No authenticated copy of Amalanama was submitted so far. In the said Amalnama it was mentioned that the land measuring 0.96 acres was located on the Western part of the plot lying from Carzon Road (now NH 6) to Southern part of the plot. However, 0.96 acres of land was recorded in favour of Gopal Chandra Dey, S/O- Krishna Prasad, Bhusan Ch. Paul and Kishori Paul both sons of Saday in R.S. Khatian No.- 325 of the said Mouza. The operation of LR work was initiated and modified volume of Khatians was prepared under Section 47 of West Bengal Estate Acquisition Act, 1953. The field work of LR operation was termed as Khanapuri-Cum-Bhujarat (abbreviated as KB), which was based on the modified volume and 5.99 acres of land was allotted to different parradars on 03.04.1970 vide R/S case No.-1A/70. During the LR work of settlement operation, 8.95 acres of land was recorded against khatian no. 1 and the rest area had been recorded in favour of different patta holders and Raiyats. The crux of the averments made in the written submission, the Writ Petitioners had not been satisfied with the land demarcated in favour of them. The grievance of the Petitioners had no basis, it was required to delineate the sequence of grievance in a nutshell. The configuration of the Suit Plot was tabled below:-

Total area – 15.52 acres; Vested area – 8.45 acres; Raiyat & Patta Area – 6.57 acres; Drainage – 0.50 acres. For the upliftment of downtrodden people, Pandit Raghunath Murmu Abasik School was proposed to be established on 8.45 acres of vested area and construction work was initiated

in the year 2013. The instant Writ Petition was filed by 32 number of Petitioners. In W.P. No. 34408 of 2013, the Hon'ble High Court had been pleased to pass an interim order dated 27.01.2014. One vacating application being no. 7922 of 2014 was filed in order to vacating the order dated 24.01.2014 in connection with the matter as the reason for granting the interim order was mainly based on the fact that nobody represented the State. Another application being CAN No. – 7109 of 2015 was filed by some of the Writ Petitioners in connection with Writ Petition No. – 34408 of 2013 for seeking withdrawal as they did not wish to pursue the matter. The Petitioner Nos. 19, 22 and 26-32 were exempted from the arena of the proceedings by this Court. No part of the petitioners' land had been acquired and no part of the surviving petitioners' land was involved in the construction of the school. Pursuant to the said solemn order dated – 11.09.2015 the construction of school building was going on and on the other hand, B.L. & L.R.O., Panskura – I had conducted field measurement and demarcation on 09.10.2015 and 28.10.2015. The report and sketch map had been submitted before the Court. Thereafter, MAT No.- 222 of 2016 and MAT No.- 224 of 2016 were filed and Hon'ble Division Bench of High Court at Calcutta had been pleased to pass an order dated- 20.05.2016. This Court had fixed up a date on 31.05.2016 for spot enquiry which would be completed by B.L. & L.R.O., Panskura-I who would also give a hearing in the month of June. No remark with regard to continuation of construction of school building had been mentioned. Pursuant to the said order dated 20.05.2016, de novo spot enquiry and demarcation was done on 31.05.2016, in presence of the all interested parties. The demarcation work

was concluded in conformity with the locational parameter as fixed up in the last paragraph of the Amalnama which was given by the Writ Petitioners. A hearing was done on 02.06.2016 by the B.L. & L.R.O., Panskura-I in presence of the interested parties. As regards the anomaly found the LR RoR had not been cured. The discrepancy found in LR RoR was cured by the B.L. & L.R.O., Panskura-I in Misc. Case No.- 10 of 2015, concluded under Section 51BB of WBLR Act, 1955 and 0.38 acre of land was amalgamated in suit plot and the area of the plot becomes 15.90 acres. The 0.38 acre of land was proportionately recorded in favour of Raiyats. After spot enquiry the enquiry report along with the records was submitted before the Division Bench on 09.05.2016, pursuant to direction given by the Hon'ble Court on 19.04.2016. Finally, the MAT No.- 222 of 2016 and MAT No.- 224 of 2016 was disposed of. On the backdrop of the above factual matrix, there was beyond the shadow of doubt to believe that demarcation of 0.96 acres of raiyati land had been done in presence of surviving Writ Petitioners and it was accomplished in conformity with the unregistered Amalnama prepared in order to allegedly settle the raiyats and the settlement was accepted by the State. The State could not go beyond the locational settlement as depicted in the unregistered Amalnama. The discrepancy as crept in the RoR in connection with 0.38 acres was also mitigated in Misc. Case No.- 10 of 2015 in proceeding under Section 51BB of the WBLR Act, 1955, in compliance of order of the Ld. Tribunal in O.A. No.- 816 of 2016. Under such circumstances, the Writ Petition should be dismissed with costs. More so, the claim of the Writ Petitioner could not be granted as the locational position of the subject land was parallel to NH-6 or perpendicular to NH-6,

thus posing disputed questions fact and contrary to the evidence available before this Court. At best the above mentioned issue needed to be adjudicated before the appropriate forum upon considering other relevant evidence.

4. I heard the learned counsels for the parties, perused the writ petition, the affidavits and the written notes of submissions.

5. At the outset, it appears that except for the petitioner nos. 1 to 16, the other petitioners withdrew themselves from the writ petitions. Although initially a Co-ordinate Bench of this Court passed an interim order restraining the respondent authorities from making any construction on the property and the order was extended, upon hearing of vacating application being CAN 7422 of 2014, a Co-ordinate Bench of this Court permitted construction of the school building to be continued without prejudice to the rights and contentions of the surviving petitioners and to decide the issue whether the construction of the school was on any part of the surviving petitioners' land. The concerned land and Land Reforms Officer was directed to prepare a sketch map with the help of surveyor. The said Bench while deciding an application for modification being CAN 10301 of 2015 held that the order did not dispense with the formality necessary for the purpose of acquisition in accordance with law.

6. By an order dated 20.05.2016 passed by a Division Bench in MAT 222 of 2016, the Appellate Court opined that there was a mismatch between the location of the subject land appearing in the Amalnama and the diagram and, therefore, directed filing of an explanation. Pursuant to this, the B.L. & L.R.O. submitted the report affirmed on 20.06.2016, thereby annexing

another map. On 01.11.2017 a Division Bench disposed of the two mandamus appeals with the observation that this would not prevent the appellant/petitioners from taking appropriate steps for ascertaining the location of the land in accordance with law.

7. The prime contention of the petitioners is that the entire 96 decimal in plot no.106 was taken over by the said respondents to construct the said school building. But, they failed to produce any paper establishing that the particular land in question in the big plot had been taken possession of by demarcation. The petitioners claimed compensation. The State in its affidavit and written notes delineated the manner in which the property passed on. The school was proposed to be established on 8.45 acres of vested land for the upliftment of the downtrodden and construction work was initiated in the year 2013. According to the State, no part of the petitioners land was acquired and no part of the surviving petitioners' land was involved in the construction of the school. Pursuant to the order of this Court, the B.L. & L.R.O. conducted field measurement and demarcation on 09.10.2015 and 28.10.2015. The report and the sketch map were submitted before this Court. Thereafter, on 20.05.2016, the Division Bench in MAT 222 of 2016 and MAT 224 of 2016 pointed out discrepancy and mismatch in the location in the diagram and the location appearing in the unregistered Amalnama. Anomaly as found in the LR records was that .58 acres of land was recorded and 0.38 was missing. The Court fixed up a date on 31.05.2016 for spot enquiry. A de novo spot enquiry and demarcation was done on 31.05.2016 in the presence of all interested parties. The hearing was done on 02.06.2016 by the B.L. & L.R.O., Panskura – I in presence of

all the interested parties. The discrepancies found in LR RoR were purportedly cured by the B.L. & L.R.O. in Misc. Case No.10 of 2015, concluded under Section 51BB of WBLR Act, 1955 and .38 acres of land was amalgamated in the suit property and the area of plot became 15.90 acres. .38 acres of land was proportionately recorded in favour of the Raiyats. After spot enquiry, a report was filed before this Court and the two appeals were disposed of.

8. Therefore, demarcation of .96 acres of Raiyati land was purportedly done in presence of the surviving writ petitioners and the same was allegedly accomplished in conformity with the unregistered Amalnama. The discrepancy in respect of .38 acres of land was also reportedly mitigated in the Misc. Case.

9. First, it does not appear from the documents available that the petitioners have been able to make out a prima facie case that their land was unauthorisedly taken over by the State or that they are entitled to any compensation for the same.

10. Moreover, even after attempts to prepare the map in the presence of all and a reasonable explanation provided by the State as discussed above, if the petitioners continue to allege such stark discrepancies, it is evident that the lis involves irreconcilably disputed facts, that have to be decided upon taking evidence and for which the petitioners shall be at liberty to move the appropriate forum.

11. In view of the above discussions, I do not find any merit in this application.

12. Accordingly, the writ petition is dismissed.

13. However, there shall be no order as to costs.

14. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)

