

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

RVW 164 of 2018

IA NO: CAN/1/2018(Old No:CAN/9569/2018)

**DIVISIONAL FOREST OFFICER, PANCHET
DIVISION, BISHNUPUR**

VS

DEBASHIS DEY & ORS.

in

WPLRT 50 of 2016

STATE OF WEST BENGAL & ORS.

VS

DEBASHIS DEY & ORS.

For the Appellant : Mr. Susovan Sengupta,
Mr. Subir Pal, Advocates

For the State : Mr. T. M. Siddiqui, AGP
Mr. Suddhadev Adak, Advocates

Heard & Judgement on: August 22, 2024

DEBANGSU BASAK, J.

- 1.** Divisional Forest Officer seeks review of the order dated September 29, 2016 passed by the co-ordinate Bench in WPLRT 50 of 2016.
- 2.** By the order under review, the co-ordinate Bench held that, the order dated June 22, 1982 passed by the writ Court in CR 7233(W) of

1976 was binding upon the parties, inter se, and the same attained finality after dismissal of the appeal preferred therefrom being FMAT 2164 of 1983 on April 1, 1998. Coordinate Bench, by the order under review did not find any impropriety or infirmity in the order of the learned Tribunal under challenge before it and, therefore, proceeded to dismissed the writ petition.

3. Learned advocate appearing for the review applicant submits that, the order dated June 22, 1982 passed in CR 7233(W) of 1976 was a nullity, incapable of enforcement and per incuriam as it was contrary to the law.

4. Elaborating on such contentions, learned advocate appearing for the review application draws the attention of the Court to provisions of Indian Forest Act, 1972 particularly to Section 29 thereof. He submits that, the area in which, the immovable property falls, was declared as a forest land. Consequently, according to him, in view of Section 29 of the Act of 1972, the order dated June 22, 1982 passed in CR 7233(W) of 1976 was a nullity and incapable of enforcement.

5. Learned advocate appearing for the review applicant submits that, various provisions of the West Bengal Estate Acquisition Act, 1953 were overlooked while issuing the order dated June 22, 1982 passed in CR 7233(W) of 1976. 'Forest' land could not be converted to a 'danga' as sought to be done.

6. In support of his submissions, learned advocate appearing for the review applicant relies upon **(1988) 2 SCC 602 [A.R. Antulay vs. R.S. Nayak & Anr.]** and an unreported decision of the co-ordinate Bench rendered in **CPAN 2796 of 2014 [Shri Sadhan Roy (Budhuk) & Ors. vs. Shri Arvind Kumar Singh & Ors.]**

7. Learned advocate appearing for the State submits that, relevant materials could not be produced before the co-ordinate Bench when the order under review was passed. In support of his contention that, review is maintainable, learned advocate appearing for the State relies upon **(2005) 4 SCC 741 [Board of Control For Cricket in India & Anr. Vs. Netaji Cricket Club & Ors.]; (2008) 14 SCC 171[Assistant Commissioner, Income Tax vs. Saurashtra Kutch Stock Exchange Limited]; (1970) 1 SCC 613 [Mathura Prasad Bajoo Jaiswal & Ors. vs. Dossibai N.B. Jeejeebhoy].**

8. None appears for the private respondents despite notice.

9. Private respondents claim themselves to be successor in interest in respect of Plot Nos. 7,9,47,77 and 82 in JL 41 of Mouza Benachapra, Brishnupur, Bankura measuring about 226.88 acres.

10. With the coming into effect of the West Bengal Estate Acquisition Act, 1953, such land stood vested with the State. A possession certificate in respect of such land was issued on December 4, 1955.

11. State Government issued a notification bearing No. 1820For- dated February 15, 1952 published in the Calcutta Gazette on May 17, 1988 which included the subject 'plots' as 'protected forests' in exercise of powers under Section 29(3) proviso of the Indian Forest Act, 1927.

12. Sri Ashutosh Dey and others applied before the competent authority for change of nature of land. The case in respect thereof was registered was Case No. 5 of 1968. (under Section 44(2a) of the West Bengal Estate Acquisition Act, 1953) Khanda khatian was opened in favour of the private respondents on June 1, 1969 pursuant to an order granting change of status of such land.

13. Thereafter, State authorities applied under Section 151 of the Code of Civil Procedure, 1908 for review of the order passed in Case No. 5 of

1968 and to restore the character of the land in question as forest. Such case was registered as Misc. Case No. 1 of 1969.

14. Misc. Case No. 1 of 1969 was challenged before the High Court by the private respondents in CR No. 3488 of 1969 which was disposed of by an order dated November 8, 1971 by which, exercise of powers under Section 151 of the Code of Civil Procedure Code, 1908 was upheld. Revenue Officer was directed to proceed with Misc. Case No. 1 of 1969 after giving opportunity of hearing to the persons interested.

15. Private respondents approached the High Court in CR Case No. 6735 (W) of 1972 challenging an order dated July 11, 1972 passed by the Revenue Officer in Misc. Case No. 1 of 1969. Such writ petition was disposed of by an order dated February 6, 1975 by granting liberty to the parties to raise all points before the Revenue Officer in Misc. Case No. 1 of 1969.

16. Misc. Case No. 1 of 1969 was disposed of by the Revenue Officer by an order dated December 23, 1975 by directing the change of classification of land from 'Danga' to 'forest'. Khanda khatian issued, therefore, were cancelled.

17. Order of the Revenue Officer dated December 23, 1975 was assailed by the private respondents in a writ petition in CR 7233(W) of 1976. Such writ petition was disposed of by an order dated June 22, 1982 by setting aside the entire proceedings on the ground that successive proceeding under Section 44(2a) of the West Bengal Estate Acquisition Act, 1953 was not permissible.

18. State sought to prefer an appeal against the order dated June 22, 1982 being FMAT 2164 of 1983 which was dismissed on April 1, 1998.

19. As on April 1, 1998, therefore, the decision of the writ Court dated June 22, 1982 passed in CR 7233(W) of 1976 became final between the parties.

20. Private respondents herein, thereafter, approached the West Bengal Land Reforms and Tenancy Tribunal by way of an Original Application being OA 233 of 2011 seeking a direction upon the Land Reforms Department to correct the Record of Rights in terms of the order dated June 22, 1982 passed in CR 7233(W) of 1976. Learned Tribunal allowed OA 233 of 2011 by directing the Principal Secretary, Land & Land Reforms Department to restore the khanda khatian showing the land in question as 'danga'.

21. State approached the High Court under Article 226 of the Constitution of India assailing the order dated September 3, 2015 passed by the Tribunal in WPLRT No. 50 of 2016. Such writ petition was dismissed by the High Court on September 29, 2016. A Special Leave Petition directed against the order dated September 29, 2016 was also dismissed on October 6, 2017.

22. The Divisional Forest Officer applied for review by way of present Memorandum of Review seeking review of the order dated September 29, 2016 passed in WPLRT No. 50 of 2016.

23. As noted above, by the order under review, it was held that the order dated June 22, 1982 passed in CR 7233 (W) of 1976 attained finality on dismissal of the appeal preferred therefrom. By the order under review, no impropriety or infirmity by the order of the learned tribunal was found.

24. As noted above, the review application is by the Divisional Forest Officer. State which filed the writ petition in which the order under review was passed, it did not apply for review. It allowed the Divisional Forest Officer, who is subordinate to it, to apply for the review.

25. All that the order under review did was recognize the finality of the order dated June 22, 1982 passed in CR No. 7233 (W) of 1976 on the dismissal of the appeal sought to be preferred therefrom.

26. As on date, there is no challenge to the order dated June 22, 1982 passed in CR 7233(W) of 1976. Challenge launched by the State by way of an appeal being FMAT 2164 of 1983 failed on April 1, 1988.

27. By no stretch of imagination, order dated June 22, 1982 passed in CR 7233(W) of 1976 which attained finality between the parties governing the same can the review applicant legitimately contend that it was not bound by it. State and the private respondents are parties to such writ petition in which such order was passed. Review applicant is subordinate to the State and traced its right through the State. Review applicant is, therefore bound by such order also.

28. In view of the parent order dated June 22, 1982 passed in C.R. 7233 (W) of 1976 remaining as it is, it is incumbent upon judicial authorities to implement the same amongst the parties who are bound by the same. Tribunal did so. Order under review upheld the decision of the Tribunal in that regard.

29. No new material is placed before us to suggest let alone establish that, there is any error in the order under review. Both the review applicant as well as the State claimed that the order dated June 22, 1982 passed in C.R. 7233 (W) of 1976 is a nullity, per incuriam, contrary to law and unenforceable.

30. With the deepest of respect, such issues were decided or deemed to be decided in the writ petition in which the order was passed. On the dismissal of the appeal therefrom, it is no longer open to the parties governed by such order to claim that material facts were not considered by the Writ Court passing such order.

31. A.R. Antulay (supra) was rendered in the context of the issues noted in paragraph 1 of such judgment, namely, whether, directions given by the Supreme Court on February 16, 1984 were legally proper and whether, action and trial proceedings pursuant to such directions are legal and valid and whether, those directions can be recalled or set aside or annulled.

32. In the facts and circumstances of such case, the Supreme Court found that the directions issued on February 16, 1984 were violative of the limits of jurisdiction and the directions resulted in deprivation of fundamental rights guaranteed by the Constitution.

33. In the facts of the present case, the order of the Writ Court dated June 22, 1982 is not directly under challenge. Direct challenge to such order at the behest of the State failed. State cannot be allowed to set up its subordinate to challenge such order that too indirectly.

34. The Coordinate Bench in **Shri Sadhan Roy (Budhuk) and Others (supra)** considered a review directed against an order passed by a Coordinate Bench. In the facts of that case, the Coordinate Bench found new and important fact on the subject warranting review of the earlier decision.

35. In the facts of the present case, the review applicant is putting forth any new material which was not placed earlier for consideration. That apart, the order of the Writ Court is not under review in the present review application.

36. What would constitute a res judicata is discussed in **Mathura Prasad Bajoo Jaiswal and Others (supra)**, Supreme Court is of the view that, where, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something

which is illegal, rule of res judicata will not prevent challenge to the same as a rule of procedure cannot supersede the law of the land.

37. In the facts of the present case, the land in question was directed to be recorded as 'Danga' and converted from 'Forest' to such. It was initially converted from 'Forest' to 'Danga' at the behest of the private parties. Thereafter, it was reconverted to 'Forest' at the behest of the State. Initial conversion was done by exercise of powers under Section 44(2a) of the West Bengal Estates Acquisition Act, 1953. Subsequent correction was at the behest of the State by exercising powers under Section 151 of the Code of Civil Procedure, 1908. Final decision of the revenue authorities of restoring the land in question to 'Forest' by exercise of powers under Section 151 of the Code of Civil Procedure, 1908 was questioned before the Writ Court and the Writ Court answered the same on June 22, 1982 in C.R. 7233(W) of 1976 by holding that such reconversion was not permissible.

38. In the facts and circumstances of the present case, the issue cannot be said to be a purely of law. It is a mixed question of fact and law. That apart, Section 29 of the Forests Act which empowers the State to declare an area as 'Protected Forests' recognizes in Sub-section (3) that, there can be private land within the area so declared and requires the State Government to make an enquiry as to the nature and extent, rights of the private persons in and over forests lands so declared. Necessarily, therefore, questions of issues of facts also arise if one is required to decide as to whether, the land in question is a forest land and, therefore, incapable of being converted.

39. Board of Control for Cricket in India and Another (supra) and Assistant Commissioner, Income Tax, Rajkot (supra) dealt with right of review. The ratio laid down therein does not assist the review applicant.

As noted above, the State is not the review applicant but an official subordinate to it is seeking review of the order of the Coordinate Bench. More importantly, the order passed by the Writ Court which is now binding between the parties, is not under challenge.

40. In view of the discussions above, we find no merit in the memorandum of review.

41. RVW 164 of 2018 along with all connected applications are **dismissed** without any order as to costs.

(Debangsu Basak, J.)

42. I agree.

(Md. Shabbar Rashidi, J.)

Dd/AD