

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

30+31 11.9.2024
Sc Ct. no.2

**WPA 1865 OF 2024
with
WPA 1866 OF 2024**

Biswajit Sarkar

Vs.

The State of West Bengal & Ors.

Mr. Bikramaditya Ghosh
Ms. Supriya Singh.

....For the Petitioner
in both Writ Petitions

Mr. Joyjit Choudhury, Ld. A.A.G.
Mr. Nabankur Paul
Ms. Bedashruti Bose.

....For the Respondents
State

Mr. Bikramaditya Ghosh, learned counsel appears for the petitioner in both these writ petitions. The petitioner is the singular one.

Mr. Joyjit Choudhury, learned Additional Advocate General for the State appears for the State respondents.

Since both these writ petitions are interlinked and involve the connected issues with regard to a single piece of land, on the joint prayer of the parties, the same are taken up for analogous consideration.

The issues in both these writ petitions center around a ***Patta Land*** (for short the ***patta land***). One ***Shanti Sangma*** (for short ***Shanti***) was

granted patta in respect of the land measuring **2.33** (unit not mentioned), as would be evident from the patta document being **Annexure-P1 at page 21** to **WPA 1865 of 2024** (for short the **first writ petition**).The land is divided as **0.33 as Homestead** and **2.00 acres as cultivable**, the schedule is mentioned in the said patta document. Relying upon a **Deed of Partnership** dated **March 28, 2018** at **page 23** to the first writ petition executed between Shanti and the petitioner, the petitioner claims a right to carry out a vehicle service station under the name and style of **Om Sai Service Centre and Car Washing** and a car show room as **MAHINDRA & MAHINDRA** sales point on and from the said patta land. Referring to the documents being **Annexure-P3 at pages 28 to 31** to the first writ petition, learned counsel for the petitioner submits that, the petitioner has been paying occupational tax to the gram Panchayat in respect of the said patta land and the gram Panchayat has been accepting the tax without any objection. Learned counsel then relies upon the alleged sanctioned plan, part of **Annexure-P4 at pages 32 and 33** to the first writ petition and submits that, the local gram Panchayat has sanctioned this construction plan in favour of the petitioner and the petitioner has constructed

structure on the said patta land wherefrom he carries on his business. Referring to ***Annexure-P5 at page 34*** to the writ petition learned counsel for the petitioner submits that, those are the electricity bills regularly paid by the petitioner for consumption of electricity to run his business from the said patta land. He then relies upon the document from ***pages 39 to 50*** from the first writ petition to show that, the petitioner is in occupation of the said patta land since long and has been carrying out his business therefrom.

Referring to a show cause notice dated ***August 16, 2024, Annexure-P7 at page 43 to WPA 1866 of 2024*** (for short the ***second writ petition***) learned counsel for the petitioner submits that, the ***Deputy Field Director, Buxa Tiger Reserve (West)*** had issued the said show cause notice with a charge against the petitioner for operation of commercial establishment on forest land in violation of the provisions laid down under the ***Forest Rights Act, 2006*** (for short the Forest Rights Act). The petitioner has received this show cause notice but did not reply thereto within the time stipulated therein. Subsequently, after filing this writ petition, as learned counsel for the petitioner submitted, a reply has been filed to the said show cause notice.

Learned counsel for the petitioner then refers to the eviction notice dated **August 16, 2024, Annexure-P8 at page 51** to the first writ petition, issued by the said **Deputy Field Director**.

Learned counsel for the petitioner submits that, by virtue of the valid documents the petitioner has been allowed by the original patta holder **Shanti** to run his business from the patta land. The various State authorities have accepted the same as they have issued the sanctioned plan and has been receiving occupational tax from the petitioner in respect of the said patta land. He, therefore, claims that, the petitioner has a valid right on the said land. He further submits that, the show cause notice and the eviction notice was issued on the allegation that, the petitioner has violated the provisions of the said **Forest Rights Act, Wild Life Protection Act, 1972, Indian Forest Act, 1927** and the **Forest Conservation Act, 1980** and the said **Deputy Field Director** has no authority and jurisdiction to issue the said eviction notice or the show cause notice under the law and, as such, these notices are wholly without jurisdiction. He then submits that, the **Wild Life Protection Act, 1972, Indian Forest Act, 1927** and the **Forest Conservation Act, 1980** are not

applicable in the facts of this case and on the said patta land.

Learned Additional Advocate General Mr. Joyjit Choudhury appearing for the respondents submits that, on a plain reading of the said show cause notice and the eviction notice it would be evident that, the authority has taken step against the petitioner for violation of the Forest Laws as no commercial activities are permitted to be carried out from a forest land. He submits that, the patta land in the instant case is a forest land.

Learned Additional Advocate General submits that, the user of the said patta land for which it was granted to **Shanti**, the patta holder, has been changed illegally and wrongfully by converting the same into a vehicle service station and a car show room for commercial activity, which was not the purpose for granting the patta in favour of **Shanti**.

Learned Additional Advocate General further submits that, from the patta document it appears that, the patta land is heritable but not alienable or transferable under the law. In the instant case, **Shanti** has violated the provisions of law by inducting the petitioner in the land who is not the legal heir of **Shanti** but a stranger and is carrying out commercial activity from the forest land. The petitioner has no right over the said land.

Learned Additional Advocate General further submits that, all the State authorities who have issued the statutory permissions like sanctioned plan, trade licence, electricity bills those cannot legalize existence and occupation of the petitioner on the said patta land. The authority being the said **Deputy Field Director** has authority and jurisdiction to issue the said show cause notice and the eviction notice under the provisions of the relevant forest laws.

In the light of the above, Learned Additional Advocate General submits that, the petitioner immediately is required to be restrained by an order of this Court not to carry out his commercial activity from the said patta land, which is a forest land.

Learned Additional Advocate General further submits that, the petitioner has no locus to maintain these two writ petitions.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, the said show cause notice and the eviction notice in connection therewith were issued alleging violation of the Forest Laws against the petitioner. The Forest Laws do not permit a commercial activity to be

carried out from a forest land, there is no doubt about it, when the land is a forest land.

On a close scrutiny of the said patta document, **Annexure-P1 at page 21** to the first writ petition it appears that, the patta was granted to **Shanti only for homestead and cultivation purpose**. The moment a commercial activity is carried out or any other activity is carried out contrary to the purposes for which patta was granted, such an activity is not permitted to be carried out from the said patta land.

Admittedly, the petitioner is not the **legal heir** of **Shanti** and he is a stranger to the family of Shanti. The essential terms of grant of patta shows that, the **patta totally is heritable but not alienable or transferable** under the provisions of law. Admittedly, the petitioner has been carrying out a **commercial activity** being a vehicle service station and a car showroom from the patta land, which is not permissible in law to be carried out from the selfsame patta land as the purpose of granting patta was for **Homestead and cultivation** in favour of **Shanti**.

From the said impugned show cause notice and the eviction order both dated **August 16, 2024**, it further appears to this Court that, the charges therein against the petitioner are **violation**

of diverse provisions of the Forest Laws alleged by the Forest authorities and accordingly, the authority sought to evict the petitioner from the said patta land. The petitioner has already submitted a reply to the said show cause, as submitted by the learned counsel for the petitioner recorded above.

While considering the prayer made by the learned Additional Advocate General to restrain the petitioner immediately from carrying out the commercial activity from the patta land, it appears to this Court that, the tax receipts annexed to the first writ petition at **page 28** shows the concerned gram panchayat has been receiving the occupational tax from the petitioner at least since **November 2021**. The sanctioned plan at **pages 37 and 38** to the first writ petition shows that, the Plan was sanctioned in the year **2021**. The **Trade License** was granted in the year **2023**. The **electricity connection** is there at least since **April 2022** but the show cause notice and the eviction notice were issued on **August 16, 2024**. The record, therefore, shows that the respondents State authority has allowed the petitioner to carry out his commercial activity from the patta land for at least **last three years**. All the documents, as discussed above, were also issued and the plan was

sanctioned by the State authorities on the said patta land in favour of the petitioner. It is equally true that, all these documents or the permissions granted by the State authority shall not create any right or equity in favour of the petitioner over and in respect of the said land, as the land has been used by the petitioner, *prima facie*, in violation of the conditions for granting patta, as narrated above.

In view of the discussions made herein above, the interim order restraining the petitioner to carry out his commercial activity from the patta land is not passed at this stage.

This Court, accordingly, directs as follows:

- (a) The respondent No. 4 upon issuing a ***seven days'*** prior hearing notice to the ***petitioner and Shanti*** and after giving them an opportunity of hearing shall decide the issue raised in the said show cause notice dated ***August 16, 2024, Annexure P7 at page 43*** to the second writ petition by passing a reasoned order in accordance with law.
- (b) The respondent no. 4 shall consider the reply to show cause submitted by the petitioner.

(c) The respondent no.4 shall carry out and complete the entire exercise, as directed herein, positively within a period of **six weeks** from the date of communication of this order. The reasoned order then shall be communicated to the **petitioner and Shanti** positively within a period of **one week** from the date of the said reasoned order to be passed.

(d) If the reasoned order confirms the violation, at the instance of the petitioner in terms of the allegations made in the said show cause notice, the respondent no. 4 and the respondent no. 3 and/or any other appropriate authority of the State shall take all consequential and necessary steps to give an **immediate effect** to the said reasoned order but **positively** within a period of **two weeks** from the date of the said reasoned order to be passed in accordance with law.

It is made clear that, this order shall not create any right or equity either in favour of the petitioner or in favour of **Shanti**, if they do not succeed to their respective submissions strictly in accordance with law before the respondent no.4.

The petitioner shall argue his case on the basis of the **reply to show cause** already

submitted and **not beyond that**, and for such purpose the petitioner shall be at liberty to rely upon whatever records and documents he wishes to rely upon before the respondent no. 4.

It is further clarified and made clear that, this order shall not preclude the appropriate State authority who had granted patta in respect of the said patta land in favour of **Shanti** to take steps in accordance with law, if such authority finds violation of any law or terms and conditions relating to the said patta in respect of the said patta land.

Since affidavits are not called for in these writ petitions, the allegations made in these writ petitions are deemed not to have been admitted by the respondents.

With the above observations and directions both these writ petitions, **WPA 1865 of 2024 and WPA 1866 of 2024** stand **disposed of**, without any order as to costs.

Photocopy of this order be kept with the record of each of these writ petitions.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)