

24 06.3.2025
Sc Ct. no.2

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 4068 OF 2025

Nitta Gopal Bhunia @ Das & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Sanjib Bandyopadhyay

.... For the Petitioners

Mr. Soumitra Bandyopadhyay

Mr. Srinath Singha Roy.

.... For the Respondents
State

Affidavit-of-service, filed in Court today, is taken on record.

Mr. Sanjib Bandyopadhyay, learned Counsel appears for the petitioners.

Mr. Soumitra Bandyopadhyay, learned Senior State Counsel appears for the respondents State.

Some chequered inescapable facts are necessary to be stated.

Challenging a vesting order of the State authority the petitioners, in respect of their land, filed a civil suit in the year **1980** before the learned Civil Judge, Junior Division, 1st Court, Contai, Purba Medinipur. The civil suit was decreed in favour of the petitioners on **July 28, 1989, Annexure – P1 at page 17** to the writ petition. The suit was decreed on contest against the State respondents being the defendants therein. A

declaration was made by the jurisdictional Civil Court in favour of the petitioners being the plaintiffs therein with regard to the right, title, interest and possession over the suit land and the defendants therein being the State were permanently restrained by way of a perpetual injunction from causing any disturbance in the peaceful possession of the plaintiffs over the suit land in any manner whatsoever.

The parties appearing before this Court today have confirmed that, no appeal was carried out by the State from the said decree. Resultantly, the decree has achieved its finality. In the year **2004** the State upon encroachment of the said decreed land constructed a village road in violation of the said permanent injunction. No acquisition process was initiated, neither the State has adopted the “Direct Purchase Policy” for utilizing the said land.

At this juncture, the petitioners filed the first round of writ litigation, **W.P. No. 14353 (W) of 2012**. A coordinate Bench by its order dated **July 18, 2017, Annexure-P4 at page 25 (page 29)** to the writ petition had observed that no relief could be granted to the petitioners in the writ jurisdiction and liberty was granted to the petitioners to apply before the jurisdictional executing court to execute the said decree.

Being aggrieved by the said order of the coordinate Bench, the petitioners preferred an appeal being ***MAT 1490 of 2017***. By an order dated ***November 30, 2017, Annexure-P5 at page 31 (page 34)*** to the writ petition, the Hon'ble Division Bench had dismissed the appeal and the order of the coordinate Bench dated ***July 18, 2017*** was affirmed.

Following the dictum of the coordinate Bench dated ***July 18, 2017*** being affirmed by the Hon'ble Division Bench, the petitioners applied before the executing Court, the proceeding was registered as ***Misc. Case No.47 of 2019***. The executing Court by its order dated ***August 5, 2024*** upon contest rejected the execution case on the reasons mentioned in the order dated ***August 5, 2024, Annexure-P6 at page 37*** to the writ petition.

Mr. Sanjib Bandyopadhyay, learned counsel appearing for the petitioners referring to the representation dated ***January 15, 2025, Annexure-P7 at page 43*** to the writ petition submits that the State authority has not disposed of the same, hence this writ petition.

After hearing the submissions made on behalf of the parties and upon perusal of the materials on record this Court is of the considered view that, so long the order dated ***August 5, 2024*** passed by the executing Court remains, this Writ Court cannot and shall not

entertain this writ petition. The provisions laid down under **Order XXI** of the **Code of Civil Procedure, 1908** is a complete Code. If the executing Court finds that there is any act beyond and in contrary to the decree which has attained its finality, the executing Court is clothed with the plenary power to reconstitute the status by way of *status quo ante*. The executing Court even has the power to examine the case by way of adducing evidence, if necessary. The power of executing Court, in this regard, is plenary but, of course, subject to the restrictions imposed by law.

Moreover, the right of the petitioners to ventilate their grievance in facts of this case lies before the executing Court as has been upheld by the Hon'ble Division Bench in its order dated **November 30, 2017**. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India, sitting singly, cannot and should not pass any direction but to follow the dictum of the Hon'ble Division Bench.

In view of the above, the petitioners shall be at liberty to take recourse to law if the petitioners are aggrieved with the said order dated **August 5, 2024** passed by the executing Court by initiating appropriate proceeding in accordance with law where the petitioners can also seek redressal of their present grievance.

The State authority shall also be at liberty in the meanwhile to exercise “**Direct Purchase Policy**” over and in respect of the subject land and to compensate the petitioners strictly in accordance with law, since the land has already been utilised.

It is made clear that, this Court has not gone into the merits of the rival contentions of the parties and the parties shall be at liberty to urge whatever points they wish to urge before the appropriate forum.

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

With the above observations and directions this writ petition, **WPA 4068 of 2025** stands **disposed of**, without any order as to costs.

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

(Aniruddha Roy, J.)