

Court No. 2

**10.3.2025**

(Item No. 28)

(AB)

**IN THE HIGH COURT AT CALCUTTA**  
**Constitutional Writ Jurisdiction**  
**Appellate Side**

**W.P.A. 4653 of 2025**

Sanjit Biswas & Ors.

VS

The State of West Bengal & Ors.

Mr. Ayan Boral

Mr. Amanul Islam

Mr. Sourav Mukherjee

.... For the petitioners

Mr. Supratim Dhar

Ms. Tuli Sinha

.... For the State

Mr. Piush Chaturvedi

Mr. Bhagbat Chaudhuri

Ms. Mollika Manna

.... For respondent Nos. 5 to 7

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

Mr. Ayan Boral, learned advocate appears for the petitioners.

Mr. Supratim Dhar, learned senior advocate appears for the State with Ms. Tuli Sinha, learned advocate.

Mr. Piush Chaturvedi, learned senior advocate appears for respondent Nos. 5 to 7 with Mr. Bhagbat Chaudhuri, learned advocate.

The prayers in the writ petition are quoted below:

*“a) A writ in the nature of Mandamus directing the respondent authorities to forthwith take appropriate immediate steps to stop the running of the brick field from the said land of the petitioners;*

- b) *A writ in the nature of Certiorari directing the concerned respondent authorities to produce before this Hon'ble Court all relevant records particularly the case diary and the entire case records so that conscionable justice may be done;*
- c) *Any other appropriate writ or writs direction or directions as this Hon'ble Court may deem fit and proper.*
- d) *Rule NISI in terms of prayers (a) to (c) above;*
- e) *An order of injunction directing the respondent nos. 5 to 7 not to run the brick field factory till the disposal of the instant writ petition;*
- f) *Ad interim orders in terms of prayer (d) above*
- g) *Any other appropriate order/orders as this Hon'ble Court may deem fit and proper.*

The relevant averments from the writ petition are quoted below:

- "2. *Your petitioners state that the respondents no.1 to 4 are the instrumentalities within the meaning of the term State as defined under Article 12 of the Constitution of India and performing public duties as such amenable to the Constitutional Writ Jurisdiction of this Hon'ble Court. The respondents No. 5 to 7 are the persons who are illegally occupying the land of the petitioner and running the brick field without any basis whatsoever.*
- 3. *Your Petitioners are the absolute owners of the land described hereunder:  
District Nadia under Police Station Tehatta within Mouza Jayrampur hereinafter referred to as the said land.*

| <i>Khatian Nos.</i>                              | <i>Plot Nos.</i>       | <i>Area</i>     |
|--------------------------------------------------|------------------------|-----------------|
| <i>LR 392/ 1, 491/ 1,<br/>519/2, 528/2, 58/2</i> | <i>LR 1331</i>         | <i>63 satak</i> |
|                                                  | <i>LR 1335</i>         | <i>24 satak</i> |
|                                                  | <i>LR 1336</i>         | <i>25 satak</i> |
|                                                  | <i>LR 1340</i>         | <i>96 satak</i> |
|                                                  | <i>LR 1341</i>         | <i>18 satak</i> |
|                                                  | <i>LR 1362</i>         | <i>45 satak</i> |
|                                                  | <i>LR 1489</i>         | <i>99 satak</i> |
|                                                  | <i>LR 1509</i>         | <i>25 satak</i> |
|                                                  | <i>LR 1640</i>         | <i>78 satak</i> |
|                                                  | <i>Total 473 satak</i> |                 |

4. *Your petitioners state that after demise of Lalmohan Biswas the petitioners are the only legal heirs of the deceased Lalmohan Biswas and as envisaged under the Hindu Succession Act, 1956 the petitioners have become the absolute owners of the said land.*
5. *Your petitioners state that the petitioners have recorded their names in respect of the said land.*  
*The photocopies of the record of rights standing in the name of the petitioners are annexed hereto and marked with letter "P-1".*
6. *Your petitioners state that the respondents no. 5 to 7 illegally running a brick field illegally without having any right title and interest over the said land and even polluting the entire area by air pollution.*
7. *Your petitioners state that the petitioners have requested the said respondents no. 5 to 7 not to run the brick field over the said land but no heed has been paid to the request of the petitioners."*

Mr. Ayan Boral, learned counsel appearing for the petitioners submits that, the complaint against the private respondents that they are running the brick field allegedly in a manner which is illegal and wrongful. The reliefs claimed in the writ petition will not show that any relief has been claimed touching the right, title and interest on the subject land wherefrom the brick field is running. Mr. Boral submits that, the petitioners contend that the private respondents are running the brick field without due process of law.

Mr. Piush Chaturvedi, learned senior counsel appearing for the private respondents has questioned

the maintainability of the writ petition principally on two grounds.

The **first** ground is that the petitioners have filed a partition suit before the jurisdictional Civil Court and the same is pending. Therefore, the petitioners cannot claim themselves to be the absolute owner of the subject land which is a joint property of the petitioners and the private respondents. Thus, the petitioners cannot seek the relief prayed for in the writ petition.

The **second** ground is suppression of fact that the petitioners have not disclosed the pendency of the partition suit before the jurisdictional Civil Court. Suppressing the fact of pendency of the partition suit the petitioners had made an averment in the writ petition that the private respondents do not have any right, title and interest on the land wherefrom the brick field is being running and the petitioners claimed themselves to be the absolute owner of the land. Therefore, the petitioners have not applied before this Court in its high prerogative writ jurisdiction which is also an equitable jurisdiction, with clean hands by suppressing material facts and by claiming themselves to be absolute owners of the property in a wrongful and illegal manner.

After considering the rival contentions of the parties and upon perusal of the materials on records,

it appears to this Court that, the reliefs claimed against the private respondents in the writ petition is to adjudicate whether the private respondents are carrying out the brick field illegally or unlawfully.

Mr. Chaturvedi, learned senior counsel submits that, after compliance of all statutory requirements in every respect the brick field is being running.

To deal with the first limb of submission of Mr. Chaturvedi, learned senior counsel, this Court finds it appropriate to reiterate the settled law on the joint ownership of an immovable property. It is admitted by the petitioners that the partition suit is pending as contended by Mr. Chaturvedi.

The law is well settled that when there are co-owners of an immovable property so long it remains undivided without partition in accordance with law, every co-owner is the absolute owner and has absolute right, title and interest over every inch and particle of such immovable property. Therefore, so long the partition suit is pending between the petitioners and the private respondents, all the petitioners and the private respondents are the absolute owners of the immovable property jointly having absolute right, title and interest on every inch and particle of the same.

However, it is made clear that, this Court does not express its opinion, view or finding with regard to the right, title and interest either of the petitioners or of the private respondents on the land in any manner.

The second plea of objection taken by Mr. Chaturvedi, learned senior counsel is suppression of fact. Admittedly the writ petition does not disclose about the details of the pending partition suit but the petitioners admit the pendency of such partition suit in course of hearing. Suppression of any material fact which is required and essential to be considered while adjudicating a proceeding, shall no doubt be fatal for the initiator of the proceeding if the proceeding has been initiated in suppression of any such materials fact. The reliefs claimed in the prayer on the basis of averments made in the writ petition would show that the petitioners have questioned the running of the brick field and contended that the brick field is being run without following the due process of law. There is no question raised with regard to adjudication of any title or interest on the land.

Even if, the petitioners having not been joint owners of the land they have every right to raise this dispute and to bring it to the notice of the appropriate State authority to examine whether the brick field is running after due compliance of the procedure of law. Even an adjacent land owner can question it or even a

person who is not from the same locality can question it, the law is now settled as such.

Therefore, whether the petitioners are absolute owners or not of the land or that the private respondents have no right, title and interest on the land are not material facts to decide the issue in the writ petition. The relevant consideration is whether the facts suppressed by the petitioners would have a material bearing on the adjudication, so that had the facts being stated and disclosed would have altered the decision of the adjudication whether the brick field is being operated in accordance with law.

In view of the foregoing reasons and discussions the objections raised by Mr. Piush Chaturvedi, learned senior counsel appearing for the private respondents stands **rejected** and **overruled**.

Since a question has been raised by the petitioners against the private respondents with regard to the legality of running the brick field, it is the duty of the appropriate and jurisdictional State authority to consider the same.

Accordingly, the petitioners shall be at liberty to submit a composite representation before the respondent no. 3 in the light of the case made out in the writ petition and not **beyond that** positively within a period of **two weeks** from date.

In the event such representation is made, the respondent no. 3 upon issuing a prior hearing notice of at least **seven days** to the petitioners and the private respondent nos. 5 to 7 and any other appropriate State authority as would be deemed fit and proper and after granting them an opportunity of hearing shall dispose of the representation by passing a reasoned order in accordance with law.

In the event, such a representation is submitted, the respondent no. 3 shall carry out the entire exercise and complete the same positively within a period of **four weeks** from the date of receiving the such representation from the petitioners and the reasoned order shall be communicated to the petitioners, private respondents and such other State authorities as required to be communicated positively within a period of **two weeks** from the date of the said reasoned order to be passed.

In the event, the reasoned order goes against the private respondents, then the appropriate State authority shall take all necessary and consequential steps and measures in accordance with law but positively within a period of **four weeks** from the date of the said reasoned order to be passed.

In the event, it is found that the subject brick field is being operated after compliance of all legal formalities and statutory requirements and in

accordance with law, then no coercive steps shall be taken against the said brick field operation.

It is made clear that, this order shall not create any right or equity either in favour of the petitioners or in favour of the private respondents, if they do not succeed to their respective claims before the respondent no. 3 strictly in accordance with law.

It is once again made clear that, this Court has not gone into the rival contentions of the petitioners and the private respondents with regard to the right, title and interest of the land and no view and opinion has been expressed by this Court in this regard. The jurisdictional Civil Court while trying the partition suit shall try the same independently in accordance with law and without being influenced by observation, if any, made by this Court.

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

Upon considering the issue involved in this writ petition and objections raised on behalf of the private respondents, this Court finds that no fruitful purpose shall be served in keeping the writ petition pending by calling upon the parties to file their respective affidavits, as the maintainability of the writ petition was raised purely on question of law,

accordingly, this Court proceeds to dispose of the writ petition at the motion stage.

With the above observations and directions, this writ petition, **WPA 4653 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.)**