

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**M.A.T. 2291 of 2023
West Bengal Housing Infrastructure Development
Corporation Ltd. & Anr.**

Vs.

Enayet Ali Molla & Ors.

With

CAN 2 of 2023

With

**M.A.T. 2363 of 2023
Azharul Laskar & Ors.**

Vs.

The State of West Bengal & Ors.

With

CAN 3 of 2023

**For the Appellant
in M.A.T. 2291 of 2023**

**: Mr. Abhratosh Majumder, Sr. Adv.,
Mr. Chayan Gupta
Mr. Dyutimoy Paul
Mr. Saaqib Siddiqui
Mr. Sandip Dasgupta**

**For the Appellant
in M.A.T. 2363 of 2023**

**: Mr. Surya Prasad Chattopadhyay
Mr. Arjun Samanta
Mr. Ankit Chatterjee
Mr. Trishtrya Mukherjee**

**For the WBHIDCO in
M.A.T. 2363 of 2023**

: Mr. Abhratosh Majumder, Sr. Adv.,
Mr. Chayan Gupta
Mr. Dyutimoy Paul
Mr. Saaqib Siddiqui
Mr. Sandip Dasgupta

**For the private respondent nos.
1 to 5 in M.A.T. 2291 of 2023
and for the private respondent
nos. 7 to 11 in
M.A.T. 2363 of 2023**

: Mr. Syed E. Huda
Mr. Nemaï Betal
Mr. Goutam Banerjee

Heard & Judgment on

: April 23, 2025

DEBANGSU BASAK, J.:-

1. Two appeals are taken up for analogous hearing as they emanate out of the same impugned judgment and order dated August 14, 2023 passed in W.P.A. 19047 of 2023.
2. Learned Senior advocate appearing for the appellants in M.A.T. 2291 of 2023 submits that learned Single Judge did not offer any opportunity of filing affidavits to his clients prior to passing the order impugned. He submits that, there are disputed questions of facts involved with regard to the title to the immovable property concerned. His client owns 0.77 acres in respect of the plot in question. He draws the attention of the Court to the order impugned and submits that the learned Single Judge proceeded

to declare title in respect of an immovable property concerned in a writ petition which is not permissible.

3. Learned advocate appearing for the appellants in M.A.T. 2363 of 2023 submits that, his clients are co-sharers of the immovable property concerned. The writ petitioners deliberately did not make his clients party respondents in the writ petition knowing fully well the ownership of his clients. He submits that, the writ petitioners are not entitled to any of the relief as sought for in the writ petition.
4. Learned advocate appearing for the private respondents in both the appeals draws the attention of the Court to the writ petition, its averments and the prayers made therein. He submits that his clients are claiming right, title and interest in respect of 0.5750 acres in the plot of land being R.S. 1358/1445. He submits that the plot being R.S. 1358/1445 emanated out of C.S. Plot No. 1346. He submits that C.S. Plot No. 1346 was divided into three portions of which R.S. Plot No. 1358/1445 comprised an area of 2 acres. The writ petitioners claim 0.5750 acres out of the total area of 2 acres.
5. Learned advocate appearing for the private respondents draws the attention of the Court to the correspondence exchanged between the relevant authorities. He submits that the appellants in M.A.T. 2291 of 2023 claims that subject plot was acquired. He refers to a letter of the

relevant authority who stated that such acquisition did not occur. He submits therefore that the claim of ownership by the appellants in M.A.T. 2291 of 2023 is without any foundational basis.

6. Learned advocate appearing for the appellants refers to the affidavits filed in one of the applications in the appeal and submits that so far as the appellants in M.A.T. 2363 of 2023 are concerned, they sold their respective shares of the immovable property concerned by several deeds to different persons far in excess of the area that they can legitimately claim to be the owners of. Therefore, according to him, the appellants in M.A.T. 2363 of 2023 cannot be treated as owners of Plot No. 1358/1445 at all.
7. In response to a query of the Court, learned advocate appearing for the appellants submits that although there was a suit for partition amongst the private parties in respect of the immovable property concerned. There is presently no records available to suggest the result of such suit for partition.
8. Writ petitioners being the private respondents herein approached the Writ Court with the following prayers:-

“(A) Writ in the nature of Mandamus restraining the respondents from encroaching upon the land of the petitioners located and situated at Mouza – Chakpachuria, JL. No. 33 comprised in RS Dag No. 1358/1445 corresponding to CS Dag No. 1346, RS Khatian No. 85.

B) Writ in the nature of Mandamus restraining the respondents from obstructing the Block Land and Land Reforms Officer,

Rajarhat, to survey the land of the petitioners located and situated at Mouza – Chakpachuria, JL. No. 33 comprised in RS Dag No. 1358/1445 corresponding to CS Dag No. 1346, RS Khatian No. 85.

C) A Writ in the nature of Certiorari directing the respondents to transmit the entire records of the case to this Hon'ble Court so that considerable justice may be rendered;

D) Rule ni-si in terms of prayers (A), and (B) above;

E) Ad-interim order in terms of prayers (A) and (B) till the disposal of this application.

F) Such further Order or Orders and/or Direction or Directions as this Hon'ble Court may deem fit and proper for the ends of Justice."

9. Learned Single Judge proceeded to pass the following directions:-

"23. To conclude, it is found that the respondents no. 3 and 4 partly acquired 0.77 acres of land in plot NO. 1358/1445. The Water and Irrigation Department did not acquire any land in the said plot, but the fact remains that Bagjola Canal is flowing adjacent to the subject land. It is admitted by the General Manager (Law) HIDCO who was present in Court on being asked by the court that HIDCO already settled 0.77 acres of land which was acquired to the allottees following relevant process of law. Thus, at present HIDCO has no acquired land in plot No. 1358/1445. Naturally, the land which is lying in the said plot belongs to the petitioners by virtue of registered deed of sale executed by Shanti Rani Dey in favour of Mother Ali Molla, predecessor in interest of the petitioners, by inheritance.

24. In view of the above finding, the petitioners are entitled to get appropriate relief against respondent No. 3 and 4. Accordingly, the instant writ petition is allowed. A writ under nature of mandamus be issued forbearing the respondents No. 3 and 4 from encroaching upon any portion of the subject land comprised in RS Dag No. 1358/1445 corresponding to Khatian No. 85 corresponding to CS Dag No. 1346 of Mouza – Chakpachuria."

10. As would appear from the contentions of the appellants in the two appeals

private respondents before us, as recorded by us, there are serious

disputes with regard to the title of the immovable property concerned.

11. Plot No. 1358/1445 emanated out of C.S. Plot No. 1346. In fact, three plots emanated out of C.S. 1346. Of the three plots emanating out of C.S. 1346 only one plot, namely 1358/1445 is involved in the proceedings. The total area of such plot is admittedly 2 acres. Such area appears from the record of rights made available to Court. Such area of land is also admitted at the Bar.
12. Private respondents claim 0.5750 acres out of 2 acres of Plot No. 1358/1445. Plot No. 1358/1445 is yet to be divided by metes and bounds. Nothing is placed on record to suggest so. Writ petition does not contain any demarcation.
13. Appellants in M.A.T. 2363 of 2023 claim ownerships over such plot of land also. Court is informed that there is a civil suit in respect of such plot pending before a Civil Court. It is pointed out on behalf of the private respondents that such civil suit was filed subsequent to the impugned judgment and order.
14. Appellants in M.A.T. 2291 of 2023 claim ownerships of 0.77 acres in respect of same plot. There are disputes amongst the parties to the two appeals as to ownership of the plot involved. That apart there is the issue of demarcation. Civil suit is pending.
15. These are disputes which ideally a Writ Court need not enter into on the basis of affidavit evidence. In the facts and circumstances of the present

case, directions for filing of affidavits were also not given by the learned Single Judge.

16. In view of the disputed questions of facts involved particularly with regard to the title to the immovable property concerned and the relief as prayed in the writ petition should await an authoritative pronouncement of a competent civil Court, we do not find the writ petition to be not entertainable.

17. In such circumstances, we set aside the impugned judgment and order. W.P.A. 19047 of 2023 is dismissed.

18. **M.A.T. 2291 of 2023** and **M.A.T. 2363 of 2023** and the connected applications in both the appeals are disposed of without any order as to costs.

(Debangsu Basak, J.)

19. I agree

(Md. Shabbar Rashidi, J.)

S.D.