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WPA 31754 of 2008

Sri Bhuban Chaital
Vs.
Durgapur Steel Plant Authority & Ors.

Mr. Binay Kumar Panda
Mr. Subham Kanti Bhakat
....for the petitioner

Mr. Tapas Kumar Banerjee, Sr. Adv.
Mr. Souvik Nandy, Sr. Adv.
Mr. Subrata Santra
Mr. Shamba Chakraborty
..... for the respondent nos. 1 to 3

The present writ petition has been preferred challenging the legality and/or propriety of a reasoned order passed by respondent no. 3 in compliance with the order dated 10.03.2008, passed by a Co-ordinate Bench of this Court in W.P. No. 27200(W) of 2007.

Mr. Panda, learned Advocate representing the petitioner, submits that one stall, vide D.R. 21, was allotted in favour of the petitioner and one Jiban Ghoshal by the Durgapur Steel Plant Authority as far back as on 28.12.2002. He further submits that Jiban Kumar Ghosal has never participated in the business, and his whereabouts are not known.

He contends that a third party has forcefully taken possession of the said stall and is presently carrying on business therefrom. The petitioner brought this fact to the notice of the concerned respondents, but no action was taken, compelling him to file W.P. No. 27200(W) of 2007. The said writ petition

was disposed of by a co-ordinate Bench of this Court with a direction upon the respondents to consider the petitioner's representation, address the issue, and take an appropriate decision. However, while passing the reasoned order, the authority overlooked the issue raised by the petitioner and returned an erroneous finding, thereby warranting interference by this Court.

He further submits that the respondent authorities may be directed to remove the unauthorised occupants from the said stall and to ensure that the petitioner, being the lawful allottee, is put in possession thereof and is able to utilize the same without any obstruction from third parties.

In rebuttal, Mr. Banerjee, learned Senior Advocate representing the respondents, refers to an unreported decision rendered by a Co-ordinate Bench of this Court on 17.05.2022 in WPA 498 of 2009 and WPA 16663 of 2018, and submits that, subsequent to the filing of the present writ petition, two more writ petitions were filed by the petitioner. He further submits that the present petitioner entered into an agreement with his brother, viz. Uma Kanti Chaital, in respect of his 50% share of the said stall, and that Uma Kanti Chaital has taken possession of the stall and is running a business therefrom. He submits that in the order dated 17.05.2022, it was observed that it was a dispute between private parties and third party in occupation of the premises. A copy of the order dated 17.05.2022, as produced on behalf of the respondents, is taken on record.

Heard the learned advocates appearing for the respective parties. Peruse the materials placed before me.

The order dated 17.05.2022 noted that, in terms of an agreement executed between Jiban Ghosal and Uma Kanti Chaital, Uma Kanti Chaital took possession of the stall and has since been carrying on business therefrom. The petitioner, however, lodged a complaint before the competent authority alleging that Uma Kanti Chaital had forcefully taken possession of the stall. Alleging further inaction on the part of the concerned respondents in dealing with such complaint, the petitioner thereafter filed a writ petition being W.P. No. 27200(W) of 2007.

Thereafter, during pendency of the present writ petition, the petitioner preferred another writ petition, being WPA 498 of 2009, on the self-same issue, and subsequently, filed yet another writ petition, being W.P. No. 16663 of 2018, seeking an order for disconnection of the electricity supply to the said stall, on the ground that Uma Kanti Chaital had defaulted in payment of electricity charges to the competent authority.

Having regard to the submissions made by both the petitioner and Mr. Ghosal, the respondent authorities permitted partition of the said stall on certain terms and conditions. On 29.01.2022, respondent no. 2 inspected the stall and, upon inspection, it was found that the stall was being run by Uma Kanti Chaital, the petitioner's brother and a non-contracting party, and that a partition had been made affecting the thoroughfare.

The order dated 17.05.2022 indicates that a Co-ordinate Bench of this Court, upon considering the nature of the dispute and all relevant aspects, held that the controversy is essentially

one between private parties and a third party, and accordingly concluded that the writ petition was not maintainable. In view of the fact that a Co-ordinate Bench has already held that the dispute between the petitioner and Uma Kanti Chaital is a private dispute not amenable to writ jurisdiction, I am of the opinion that the said decision operates as *res judicata*. Hence, taking a view contrary to the observations made by the Co-ordinate Bench in those writ petitions arising out of the selfsame cause would not be appropriate, as it would virtually amount to sitting in appeal over that decision.

In view thereof, I am of the considered opinion that no interference is warranted in the present writ petition. Accordingly, the same is dismissed. There shall be no order as to the costs.

However, it is clarified that this order shall not preclude the petitioner to approach the appropriate forum to have his grievances redressed in accordance with law.

There will be no order as to costs.

(Partha Sarathi Chatterjee, J.)