

(2023) 11 CAL CK 0010
In the Calcutta High Court
Case No : WPA No. 17932 Of 2023

Arun Kumar Ghosh

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 17-11-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 — Section 3, 4
Code Of Civil Procedure, 1908 — Section 151
Code Of Criminal Procedure, 1973 — Section 156(3)
Indian Penal Code, 1860 — Section 34, 323, 379, 447, 506

Citation : (2023) 11 CAL CK 0010

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Saktinath Mukherjee, A. Banerjee, Jaydip Kar, Siddhartha Banerjee, Dyutiman Banerjee, Deb Kumar Das, Soumajit Majumder, Chandi Charan De, Sadhan Halder

Final Decision : Disposed Of

Judgement

Bibek Chaudhuri, J

FACTS

On 2nd February, 2001 by a notice published in the newspaper, the Government of West Bengal invited expression of interest to set up a hybrid/high yielding seed and seedling production center for vegetables, flowers, spices and other horticultural production at Ayeshpur, Haringhata, Nadia. It was declared in the said notification that the proposed project will be carried on and conducted as a joint venture project of West Bengal State Food Processing and Horticultural Development Corporation Limited, respondent No.3 herein. The petitioner having fulfilled all the eligibility criteria, participated in the selection process and the concerned department selected the petitioner's company for the seed project and by a Memo dated 30th March, 2001, the Administrative Department of

Government of West Bengal instructed the petitioner to set up the seed production center at Ayeshpur, Haringhata, Nadia. It is further stated by the petitioner that for running the said project jointly with the corporation (respondent No.3) the petitioner formed a private limited company in the year 2003. During the initial discussion of the joint venture company, the petitioner was informed that a piece of land would be provided by the Land and Land Reforms Department. The corporation by its letter dated 22nd December, 2003 instructed the petitioner to take all the necessary measures for trial cultivation on the said land. That on 11th August, 2004 a draft Memorandum of Understanding was sent by the Corporation to Shanti Agri-Horti Pvt. Ltd wherein also no time limit was mentioned for establishment of the production center, and it was also not mentioned whether any part of the period during which the production activities would be carried out was considered on trial run basis or not. The petitioner was permitted to carry on the production activities on 5 hectares of land situated at Ayeshpur, Haringhata, since the year 2003 though no Memorandum of Understanding was executed. The petitioner in good faith and for the interest of public supported production on trial basis on the said land. The company of the petitioner had entered into an agreement with Bidhan Chandra Krishi Viswavidyalaya in order to obtain their expertise and to research work for production of high yielding seeds. He had employed more than 50 to 60 employees in the said production unit since commencement of the activities at the site. However, on 30th April, 2010 an order was issued instructing the petitioner to show cause as to why commercial cultivation has been carried out without permission and also to submit explanation for non-submission of returns/statements of account to the corporation for years and the corporation further instructed the petitioner to vacate the occupied land by 30th June, 2010. However, the respondent authorities did not give any effect to such letter dated 20th July, 2010. On the contrary, a meeting was held on 5th August, 2010 between the petitioner and the Assistant Secretary, Department of Food Processing Industries and Horticulture, Government of West Bengal for finalizing the joint venture agreement on the land in question. The petitioner has been running with production of high yielding seeds and seedlings in the said land and also supplied plant and supply to the different government projects in the State of West Bengal as well as other States. The petitioner company has been running the said project diligently with the aid and assistance of experts of Bidhan Chandra Krishi Viswavidyalaya. The State Government also obtained a report from the Dean, Horticulture, Bidhan Chandra Krishi Viswavidyalaya on 28th April, 2011 about the status of such collaboration with an entity owned by the petitioner and the concerned authority had duly relied to the queries through its letter dated 9th September, 2011. Suddenly on 25th September, 2020 a show cause notice was issued by the Sub-Divisional Officer in purported exercise of power under Sections 3 and 4 of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 and in connection with such notice the petitioner was directed to attend hearing on 5th October, 2020. In inquiry, the petitioner came to know that the corporation, respondent No.3 made two

complains before the Sub-Divisional Officer requesting him to take step for eviction of the petitioner from the land in question. The petitioner challenged the said notice issued by the Sub-Divisional Magistrate, Kalyani by filing a writ petition under Article 226 of the Constitution which was registered as WPA 1497 of 2021. However, at the time of hearing of the said writ petition, the corporation sought for liberty to withdraw the said notice dated 24th September, 2020 for initiation of fresh step as per law as such the notice dated 24th September, 2020 stood withdrawn with the leave of this Court. It is also submitted by the petitioner that Shanti Agri-Horti Pvt. Ltd. as a juristic entity filed another writ petition being WPA 8356 of 2020 challenging the aforesaid notice and the said writ petition is still pending for adjudication, although the same has become infructuous after withdrawal of the notice by the State respondents. Thereafter, the petitioner was continuing his work as per Memorandum of Understanding on the said land. However, on 9th August, 2021 some persons forcefully entered into the said land and assaulted the employees of the petitioners company took away valuable machines and plants and further tried to evict the petitioner forcefully. The petitioner immediately lodged an FIR before the local police station. He also preferred a writ petition under Article 226 of the Constitution of India praying for restoration of possession and other incidental reliefs which was registered as WPA 16404 of 2021. However, such writ petition was withdrawn with the leave of the court on 30th September, 2022 due to certain omissions and subsequent events which were required to be dealt with. Even during the pendency of the investigation of the criminal case which was registered on the basis of FIR submitted by the petitioner, the men and employees of the respondent No.3 forcefully and resultantly obstructed petitioner's ingress and egress to the said property. He also registered an application under Article 226 of the Constitution being WPA 24290 of 2022 but the said writ petition was disposed of on 13th February, 2023 holding, inter alia, that there were disputed questions of fact involved in the said writ petition. Being aggrieved, the petitioner preferred an appeal against the order dated 13th February, 2023 before the Division Bench of this Court which has been registered as MAT 735 of 2023 and the same is currently pending for adjudication. It is alleged by the petitioner that subsequent to the filing of WPA 24290 of 2022, the respondents, particularly respondent No.3 has created and manufactured certain documents in the form of inter-departmental communication to claim that the corporation was granted permissive as well as physical possession of the subject land on and from 13th October, 2020. The contention of the respondents as it appears from the inter-departmental communication is blatantly false, concocted and contradictory to the Memorandum of Understanding executed between the petitioner and the respondent No.3 coupled with delivery of possession of the said land. Accordingly, the petitioner wrote a letter to the Managing Director of the respondent No.3 corporation on 21st March, 2023 stating, inter alia, that the petitioner never surrendered possession of the property measuring about 5 hectares situated at Ayeshpur, Haringhata, Nadia. The Managing Director of respondent No.3 corporation replied to the said letter on 27th April, 2023. It is

further submitted by the petitioner that the petitioner developed the said property for the purpose of horticulture and procured valuable machineries, high yielding seeds and seedling and in this way he spent approximately a sum of Rs.5 crores on the said property. The employees of the respondent No.3 have taken away the plant and seedlings along with various costly fruits from the firm possessed by the petitioner by illegally and forcefully entering into the land in the darkness of night causing tremendous loss to the petitioner. It is further submitted by the petitioner that he never surrendered the possession of the subject land voluntarily in favour of the respondent No.3. The respondent No.3 has no authority to take possession of the said land otherwise than due process of law.

PRAYER

On the above facts the petitioner has prayed for following reliefs in the instant writ petition:-

"a) Issue writ of and/or in the nature of mandamus restraining the Respondents and their men and agents restricting/obstructing the Petitioner and his men and agents from accessing the firm at Ayeshpur, Haringhata, Nadia, thereby allowing the Petitioner to ingress and egress into such property;

b) nature Issue writ of and/or in the nature of mandamus commanding the Respondents and each one of them and their men, agents, servants and assigns to rescind, recall and/or withdraw the Notice dated 27.04.2023 and abstain from taking any action in terms of such false claims of the Respondents for the purpose of evicting Your Petitioner from the land in question on the basis of the alleged false claims made through the letter dated 27.04.2023 by the Respondent Corporation, and to set aside such and communication;

c) Issue writ or writs in the of mandamus commanding the Respondents to restrain themselves from taking illegal and unauthorized steps which are directly contrary to settled principles of law as well as records of the case, in order to claim/obtain possession of the concerned property by circumventing the law;

d) nature Issue writ or writs in the of mandamus commanding the Corporation to show-cause as to why the apparently false claims over possession of land would not be disregarded and steps would not be initiated against errant officers for misusing public office;

e) An restraining interim the order Respondents from taking any steps claiming regarding possession of the said land in the absence of any legal steps being of taken for the purpose of evicting the Your Petitioner from the land in question till the disposal of this application;

f) Rules NISI in terms of prayers above;

g) Ad-interim order in terms of prayer (a), (b) and (c) written above;

h) Issue a writ of mandamus directing the Respondents to execute the

Memorandum of Understanding with the Petitioner, which has been agreed upon and acted upon by all parties for almost two decades before illegal actions have been resorted to by the Respondent No. 3;

i) Costs of and incidental to this application;

j) Such further or other order or orders be passed and/or direction or directions be given as this Hon'ble Court may deem fit and proper."

ARGUMENT ON BEHALF OF THE PETITIONER

It is submitted by Mr. Saktinath Mukherjee, senior Counsel on behalf of the petitioner that the subject land was delivered in favour of the petitioner for growing high yielding hybrid seeds and seedlings. At the outset he invites the court to the relevant dates of event. It is submitted by him that the land was handed over to the petitioner on the basis of a tender process initiated by the respondent No.3 for setting up a seed production center. The petitioner having been found the highest eligible bidder was accepted by the respondent No.3. Next Mr. Mukherjee takes me to page 58 of the writ petition which is a letter written by the Managing Director of the respondent No.3 wherein the Managing Director stated that the Department of Food Processing Center and Horticulture took up the matter with Land and Land Revenue Department for handing over 5 hectors of land to the corporation for forming a joint venture company with the petitioner at Haringhata. The corporation received the formal letter on 25th July, 2023 from the Government authority. However, no formal approval for starting the said joint venture was granted to the corporation. In anticipation of departmental approval, the corporation rendered the petitioner the said 5 hectors of land at Ayeshpur on the basis of permissive possession for trial cultivation of food plants etc at the said land. It is also stated in the said letter that the said land was given to the petitioner in anticipation of the formation of joint venture company with the corporation subject to the availability of approval from Food Processing Centers Horticulture Department and LA and LR Department, Government of West Bengal.

It was alleged by the corporation that though the petitioner was handed over possession of the said land for conducting research in respect of germination of high yielding seeds and seedlings, he has been using the said land for commercial purpose. Thus, the petitioner was directed to hand over possession of the subject land in favour of the Managing Director of the respondent No.3 corporation within seven days from the date of receipt of the letter.

Mr. Mukherjee submits that the notice dated 20th July, 2010 is a notice to quit. The petitioner was served with the said notice but he did not deliver possession of the subject land and thereby did not quit the land.

On petitioner's denial to quit the land, a proceeding under the West Bengal Public Land (Eviction of Unauthorised Occupant) Act, 1962 that on 29th June, 2020 a meeting was held in presence of the Principal Secretary, Food Processing

Industries and Horticultural Department wherein the petitioner was directed to vacate the land in question forthwith and also to communicate in writing by the 7th July, 2020, the measures he would take to vacate the land. In reply, he requested the authority for consideration of the investment that he had made towards cultivation over the said land, but the pleas were not accepted by the authority. Therefore, the Sub-Divisional Officer was requested to take step for removal of unauthorized encroachment by the petitioner under the eviction of Unauthorised Occupants Act, 1971. The petitioner challenged the said notice dated 24th September, 2020 by filing a writ petition bearing No.WPA 1497 of 2021. When the said writ petition came up for hearing the contesting respondent prayed for liberty to withdraw the said notice and initiate the proceeding afresh on the ground of technical mistake in the said notice. Subsequently, the petitioner instituted a writ petition bearing No.WPA 16404 of 2021 but the said writ petition was also withdrawn by the petitioner in view of certain omissions in the writ petition and subsequent events with liberty to file afresh on the selfsame cause of action with better particulars. The said writ petition was dismissed as withdrawn with liberty to the petitioner to file a fresh writ petition on the selfsame cause of action with better particulars.

Mr. Mukherjee next submits before me that after withdrawal of the aforesaid writ petition the respondents most illegally and unlawfully surrendered the entire subject land, prevented petitioners ingress and egress for the purpose of cultivation for which the subject land was handed over to him. It is contended by Mr. Mukherjee that the respondent's action is highly illegal and unsustainable under the law of the land because nobody can be evicted in such a manner without due process of law. In support of his contention Mr. Mukherjee refers to a decision of this Court in the case of *The State of West Bengal represented by the Secretary, Department of Fisheries & Anr. vs. M/s Bansilal Leisure Parks Ltd. & Anr.* reported in (2019) 4 CHN 582. He specifically refers to paragraph 21 to 38 of the aforesaid decision. It is submitted by Mr. Mukherjee that in the aforesaid reported decision opposite party No.1 was allowed to use the water body of Nalbon for the purpose of boating and the appertaining land for general activities of their project by setting up temporary and permanent structure for use of its office ticket counters, guard room, gates, boundary wall, fencing, electrification, restaurants, food counters, beautification etc. The said agreement was executed on 23rd September, 1998 and subsequently it was renewed for a period of 30 years till the year 2040. During the validity of the agreement, the said Fisheries Development Corporation Limited sent a notice to the opposite party No.1 purportedly cancelling the licence agreement dated 23rd September, 1993. Prior to that on 20th April, 2013, the opposite party No.2 filed a suit against the petitioners as well the opposite party No.2 inter alia, for a decree of declaration of the opposite party No.1's right to run the business and for permanent injunction. A temporary injunction was granted in favour of the opposite party No.1.

Being aggrieved against the said order the petitioners preferred a miscellaneous

appeal before the learned Additional District Judge, 15th Court at Alipore, who, by an order dated 23rd April, 2014 set aside the order of injunction passed by the trial court and allowed the misc appeal. On the very next day the District Magistrate and the Sub-Divisional Officer, Bidhannagar handed over the possession of Nalban to the Deputy Director of Fisheries. The State authorities barricaded the subject land preventing the respondent No.1 from entering into the said park and boating complex. The opposite party No.1 challenged the order passed by the learned Additional District Judge, 15th Court at Alipore vacating the order of injunction by filing a revision before this Court bearing CO No.1375 of 2014. The learned Single Judge disposed of the said revision holding, inter alia, that the opposite party No.1 was entitled to restoration of possession but it was left to the trial court upon the opposite party No.1 making appropriate application for restoration. The opposite party No.1 accordingly filed an application under Section 151 of the CPC before the trial court and the trial court allowed the said application directing restoration of possession in favour of opposite party No.1. The State of West Bengal, represented by the Secretary, Department of Fisheries and the Collector North 24 Parganas preferred a revision under Article 226 of the Constitution challenging the said order of restoration of possession. A Coordinate Bench of this Court while disposing of the said revision held:-

"38. Despite the vacating of the injunction order, the State could not, in effect, dispossess the opposite party No.1 by barricading the suit property, without due process of law. Even a trespasser has to be evicted under India Law by taking recourse to due process of law. Such unreasonable and arbitrary behavior of the State, which is supposed to be impersonal and rational, gives rise to a presumption of mala fide and arbitrary action, which is deplorable under any circumstance. It has been uniformly laid down in the cited decisions that no person can be evicted without due process of law and that in case of illegal dispossession, the court's hands are not tied in doing complete justice by directing restoration of possession."

Placing reliance on the aforesaid judgment it is submitted by Mr. Mukherjee, learned Senior Counsel on behalf of the petitioner that even if there is no order of injunction passed in any suit in favour of the petitioner, he cannot be evicted otherwise than due process of law. Mr. Mukherjee next refers to a decision of the Hon'ble Supreme Court in the case of Krishna Ram Mahale (dead) by his legal representatives vs. Mrs. Sbhobha Ram Venkat Rao reported in AIR 1989 SC 2097. In this report, it is held by the Hon'ble Supreme Court that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be disposed of by the owner of the property except all recourse to law. While coming to such decision the Supreme Court relied on the earlier decision in Lallu Yeshwant Singh vs. Rao Jagdish Singh, (1968) 2 SCR 203 at P.P 208-210 and Midnipur Zamindary Co. Ltd. vs. Naresh Naraya Roy, 51. Indian App 293 at P.293 at P.299.

Thus, it is urged by the learned Senior Counsel on behalf of the petitioner that the petitioner had been in settled possession over the subject land. The land was transferred to him by respondent No.3 for horticulture. Subsequently, the petitioner was dispossessed by the State authority without any recourse of law. Therefore, the petitioner is entitled to restoration of possession.

ARGUMENT ON BEHALF OF THE RESPONDENTS

Mr. Jaydip Kar, learned Senior Counsel on behalf of the respondent No.3 on the other hand submits that the instant writ petition is a glaring example of forum shopping, suppression of material fact and an endeavour to snatch an order from this court. In order to elucidate his argument, Mr. Kar submits that the petitioner previously filed WPA No.24290 of 2022 for identical reliefs. The said writ petition was dismissed by a Coordinate Bench vide order dated 13th February, 2023 on the ground that disputed questions of fact were involved in the said writ petition which could not be gone into by a writ court. The petitioner preferred an appeal before the Division Bench against the order dated 13th February, 2023 and the said appeal is pending.

Mr. Kar, next refers to paragraph 23 and 24 of WPA No.24290 of 2022. It was averted by the petitioner in the said two paragraphs that on 9th August, 2021 several men representing themselves to be the agents and/or employees of the corporation forcibly entered into the subject land. They assaulted the petitioner and his employees destroyed the land other plants and forcefully dragged them out of the said land. Then, the said persons surrounded the subject land with a barricade and affixed a copy of the notice on the barricade which ran thus:-

"The land belongs to West Bengal State Food Processing and Horticulture Department Corporation Limited. Trespassing in the said land is strictly prohibited by order of M.D, WBSFPDCL."

Mr. Kar draws my attention to Page-88 of the WPA No.24290 of 2022 which is a copy of the complaint made by the petitioner on very date of occurrence i.e. on 9th August, 2021 made by the petitioner to the Officer-in-Charge of Jaguli Police Station alleging, inter alia, that on the selfsame date in the morning when his employees were working in the garden some unknown persons trespassed into the land, forcibly dragged some of the employees of the petitioners out of the land and illegally dispossessed them closing the garden of the petitioner under lock and key. Subsequently, on 21st September, 2021 the petitioner made a detailed complaint to the Officer-in-Charge of Jaguli Police Station and the Superintendent of Police, Kalyani. However, police did not register any case on the basis of his complaint made on 9th August and 21st September, 2021 against the perpetrators of offence.

The record of WPA 24290 of 2021 shows that after dispossession of the petitioner and his men and agents the employees of respondent No.3 on various dates took away mother plants, machineries and highly valuable plants and trees on 30th October, 2021 and 10th December, 2021. This prompted the petitioner to

file an application under Section 156(3) of the Cr.P.C before the learned Additional Chief Judicial Magistrate at Kalyani, Nadia. The learned Additional Chief Judicial Magistrate sent the said application to the Officer-in-Charge of Haringhata Police Station directing the police authority to treat the same as FIR and start a specific case against the offenders. Only on the basis of such direction, Haringhata Police Station Case No.430 of 2021 dated 30th December, 2021 under Section 447/323/379/506/34 of the IPC was registered against the offenders on 30th December, 2021.

It is contended by Mr. Kar that the petitioner suppressed above mentioned facts in the present writ petition. It is also submitted by Mr. Kar that in WPA 24290 of 2022 the petitioner prayed for interim order of injunction restraining the respondents from interfering with the user and ingress and egress of the petitioner to and from the said premises being Shanti Nursery, Ayeshpur, Borojagoli or causing any harm to the petitioner's property or persons. In the instant writ petition the petitioner has made the same prayer for restoration of possession. When the order of the Coordinate Bench is under consideration in mandamus appeal, this Court cannot grant any relief in favour of the petitioner and the instant writ petition is liable to be dismissed out right.

Mr. De, learned Advocate for the State has adopted the submission made by the learned Counsel on behalf of the respondent No.3, on behalf of State of West Bengal.

DECISION WITH REASONS

Having heard the learned Counsels for the parties and on careful perusal of the entire materials on record placed before this Court, this Court is of the view that the instant writ petition can be disposed of on the basis of the submissions made by the learned Senior Counsels on behalf of the contesting parties and it is necessary to issue any direction for exchange of affidavit as all the documents are before this Court in the form of annexure.

It is not in dispute that the subject land was allotted to the petitioner for setting up a seed production center at Ayeshpur within P.S Haringhata in the year 2001. On 22nd December, 2003 the Department of Food Processing Industries and Horticulture, Government of India gave permission to the petitioner for trial cultivation of plants and other allied horticultural items on the said 5 hectors land at Haringhata. On 16th June, 2004, the Joint Secretary to the Government of West Bengal, Department of Food Processing Industries and Horticulture wrote a letter to the Managing Director of respondent No.3 corporation for setting up a joint venture company by the corporation, one M/s Indus Seeds Exports and M/s Shanti Agri-Horti Pvt. Ltd. (the company incorporated by the petitioner). A Memorandum of Understanding was signed and executed by the corporation and the petitioner. Subsequently, on 20th July, 2010 a notice to quit was served to the petitioner revoking permissive possession of the subject land by the Managing Director of the corporation. Subsequently, the Managing Director of the

corporation wrote a letter to the SDO, Kalyani for taking steps for removal of unauthorized occupation of the subject land by the petitioner. The said notice was challenged by the petitioner by filing WPA 1497 of 2021. The said writ petition was dismissed at the instance of respondent No.2 corporation in view of technical mistake in the said notice. Thereafter, the petitioner filed another writ petition being WPA 16404 of 2021 which was also dismissed as withdrawn with liberty to file a fresh writ petition on the selfsame cause of action with better particulars. Thereafter, the petitioner filed WPA 24290 of 2022. Main relief sought for by the petitioner in WPA 24290 of 2022 is to issue a writ in the nature of mandamus commanding the respondent authorities and/or their subordinates, specially the respondent No.3 and 4 to forthwith take steps pursuant to the complaint made by the petitioner dated August 9, 2021 and September 21, 2021 being annexure P19 and P21 respectively. In the said writ petition respondent No.3 and 4 were the Superintendent of Police, Kalyani and Officer in Charge, Jaguli Police Station.

Of course the petitioner prayed for mandamus commanding the respondent authorities specifically respondent No.4 and 5 (?) to ensure protection to the petitioner and his men and agents. Thus, initially WPA 24290 of 2022 is a writ petition against police action. Therefore, it was heard and disposed of by the bench taking up residuary matters under group-9.

The scope of the instant writ petition is absolutely different where the petitioner prayed for mandamus restraining the respondents and their men and agents from restricting/obstructing the petitioner and his men and agents for accessing the firm at Ayeshpur, Haringhata, Nadia thereby allowing the petitioner to ingress and egress into such property and other allied reliefs.

The respondents failed to produce any document to show that they obtained possession of the subject land lawfully. It is a settled proposition of law that a person who is in settled possession cannot be evicted otherwise than in due course of law. In the instant case the petitioner was evicted without following any legal procedure. When procedural latches on the part of the administrative authority takes away the valuable right to property, in whatever form it may be, remedy lies under Article 226 of the Constitution.

For the reasons stated above the action on the part of the State respondents are found to be arbitrary, illegal and mala fide.

Respondents are directed not to disturb or obstruct the petitioner and his men and agents from their ingress and egress to and from the subject land otherwise than due process of law. Accordingly, the notice dated 27th April, 2023 issued by the respondents upon the petitioner is hereby cancelled.

The instant writ petition is accordingly disposed of. However, there shall be no order as to costs.