
(2018) 07 CAL CK 0033
In the Calcutta High Court
Case No : Writ Petition2302 (W) of 2018

Bidhubhusan Patra

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 06-07-2018

Acts Referred:

West Bengal Land Reforms And Tenancy Tribunal Act, 1997 — Section 6, 9, 9(2)(b)
Constitution Of India, 1950 — Article 226
Limitation Act, 1963 — Article 112

Citation : (2018) 07 CAL CK 0033

Hon'ble Judges : PROTIK PRAKASH BANERJEE, J

Bench : Single Bench

Advocate : Anirban Mitra, Swarup Pal, Arun Bandhopadhyay, Nipa Mallick, Jahar Lal De, Shamim-ul-Bari

Final Decision : Disposed Of

Judgement

An interesting question has been posed in this Writ Petition. It involves interpretation of the respective jurisdictions of the three branches of the

Government in respect of concerned land which has been admitted by the writ petitioners to have belonged, at one point of time, to the State of West

Bengal even in 2018, but relating whereto a case of adverse possession, from the time of the predecessors-in-interest of the writ petitioner, being his

ancestors, has been alleged. Perhaps the short facts of the case are necessary to appreciate why the above question has arisen.

A writ petition was taken out by the predecessors-in-interest of the writ petitioner which was registered as Civil Rule No.7638 (W) of 1994. Rule and

interim order dated June 8, 1984 was passed in it. The respondent no. 1 herein was the respondent no. 1 therein. By virtue of the said order, the

operation of the orders impugned in the said writ petition were granted. In

effect, these were injunctions against the respondent no. 1 from dispossessing the said predecessors-in-interest or from alleging title in respect of the lands in question. However, by operation of the proviso to Section 9(2)(b) of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 the following provision was made: -

â??Provided that any interim order granted in a matter, proceeding or case by the High Court shall stand vacated on the expiry or twelve weeks from

the date appointed by the State Government under section 6 unless the Tribunal by an order varies, modifies or extends the same earlier on an

examination of the records of such matter, proceeding or case.â??

Though it is an admitted position that the said writ petition stood transferred to the Learned Tribunal in terms of Section 9 of the Act of 1997 and is

pending it is also admitted that no extension was sought for nor obtained from the said Learned Tribunal. The writ petitioner it appears filed a suit in

1996 which was since dismissed for default and is restoration refused in 2017. The writ petitioner also filed a suit, being Title Suit No.15 of 2016

where it inter alia prayed for a declaration that he and his predecessors-in-interest had perfected their title to the self-same lands by way of

prescription, id est, sought a declaration of adverse possession and the defendants had no right, title or interest therein, alongwith consequential

injunctions.

The present respondent no. 1, State of West Bengal, served through the Collector, Purba Medinipur, is the defendant no. 1. An inspection slip dated

July 30, 2016 shows that the said suit was fixed for ex parte hearing as against the defendant no. 1, to wit, the present respondent no. 1. It has been

stated that the matter has been fixed in the ex-parte board by the Learned Civil Judge (Junior Division), 2nd Court at Contai, District Purba Medinipur.

None of these facts has been disputed by the respondents, who however, have submitted their own interpretation to which I shall come shortly.

In this situation, the State of West Bengal, through its competent authority being the respondent no. 4, has issued a notice under the provisions of the

West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962, issued notices dated December 8, 2017 and January 9, 2018 asking the

writ petitioner to produce documents in respect of the allegation that the petitioner was in unauthorized possession of government/public land, in default

whereof eviction proceedings would be completed in accordance with law. The said notice was pursuant to Misc Case No. 7 of 2017 of December 8,

2017. In the said notices it was admittedly by the respondent no. 4 that the writ petitioner was in possession of the said lands without permission of the

respondent no. 1. These have been challenged before me in this writ petition.

The writ petitioner submits that all these mean that the State of West Bengal has admitted the case of the writ petitioner of prescriptive title. He

submits through his learned Advocate, that as such the respondents cannot pursue any proceeding under the Act of 1972 since the respondents have

been estopped by order (of setting them ex parte), their conduct and the records, from alleging that the land in question is either government or public

land. The writ petitioner also relies upon the interim order passed in 1984 to submit that the present course of action of the respondents is interdicted

by judicial order.

It is here where the submissions made on behalf of the State of West Bengal assumes significance. The State of West Bengal relies upon the proviso

to Section 9(2)(b), to contend that there is no interim order in the eye of law once the period of 12 weeks expired from the transfer of the writ petition

to the Learned Tribunal. The Learned Advocate for the State, would, therefore, submit that where a judicial order has been passed by a Chartered

High Court in a matter where it had jurisdiction, the legislature is competent to make a statute long after such date where by a proviso it would make

the continuance of the judicial order dependent upon lapse of a period of time from the date on which, in exercise of its executive power, it directs by

notification that the statutory tribunal would start exercising jurisdiction over such matters. This would be despite the fact that a Rule had been issued

by the Chartered High Court.

A Rule which is issued by the High Court in its jurisdiction under Article 226 of the Constitution of India is in the nature of a "Rule Nisi". Unless

cause is shown to the satisfaction of the High Court before or within a certain date, it becomes and is formally made absolute. It has not been urged

before me that the respondents have shown cause within the date mentioned in the Order dated June 8, 1984 which was held to be satisfactory by the

High Court. However, the said writ petition, as a transferred case, is still pending before the Learned Tribunal. Unless the time to show cause is stated

to have been extended, therefore, it must be held that the matter is pending before the Learned Tribunal only formally and only one order can be

formally passed, to wit, the Rule has been made absolute. I must keep in mind, that it is only the interim order which stands vacated by operation of

the proviso to Section 9(2)(b) of the Act of 1997, and the Rule itself is not discharged by operation of the statute.

Since the provisions of the Act of 1997 are aimed to divest the jurisdiction of this Court, sitting singly, which has been granted under Article 226 of the

Constitution of India, and it has been validated only by reason of the Judgement of the Hon'ble Supreme Court in L. Chandra kumar v. Union of

India and Others reported in AIR 1997 SC 1125, it must be construed strictly. Any statute which purports, with constitutional sanction as interpreted

by the Apex Court, to oust the jurisdiction of judicial review by the High Court under Article 226 of the Constitution of India exercised by a single

bench, must be strictly construed and cannot be given a wider meaning. Any other interpretation would mean that by executive notification a

constitutional provision of the importance of Article 226 of the Constitution of India can be made nugatory. A Rule Nisi is only issued on finding of a

prima facie case, and it is discharged only where the petition is dismissed for default or satisfactory cause is shown by the respondents. If the

legislature in its wisdom had thought that a Rule Nisi issued by the High Court would stand discharged by lapse of time after an executive notification,

it would have certainly provided for it by the statutory provision concerned. It has not. So, on the facts of this case as submitted before me, I hold that

the Rule Nisi cannot now be answered against the interests of the writ petitioner.

So far as the notices issued purportedly under the Act of 1962 are concerned, which have been impugned before me in this writ petition are

concerned, these appear to be, however, mere notices to show cause. The writ court is loth to interfere with a notice to show cause. This is more so,

when fact of prescriptive title, against the government, cannot be established without proving that the possession without permission has continued for

more 30 years from the date when the possession commenced, in terms of Article 112 of the Limitation Act, 1963, since the State or Central

Government has 30 years from the date when the period of limitation commenced instead of 12 years as is the case of other persons, to institute

proceedings for eviction or recovery of possession. Also, there may have been a case of vesting under the Estates Acquisition Act, 1953, when the possession may have vested in the State of West Bengal. All these are matters of evidence, and it is yet possible for the respondent no. 1 to apply for taking the case out of the ex parte board and be heard on merits in the suit. All of the above can be taken by the writ petitioner before the respondent no. 4 as causes shown, as long as no decision is taken by the respondent no. 4 contrary to the decision of the civil court which alone can decide the question of adverse possession on evidence, as permissible.

Accordingly, I think it would be proper to direct the writ petitioner to show cause in terms of the notices impugned, on a date to be fixed by a fresh notice to be issued by the respondent no. 4 giving reasonable time to the writ petitioner. However, the authorities concerned, including the 4th respondent, shall not pass any final order in respect of Misc. Case No. 7 of 2017 of December 8, 2017 or any other date, till the disposal of the said Title Suit NO.15 of 2016 pending before the Learned Civil Judge (Junior Division), 2nd Court at Contai, Purba Medinipur, and whatever decision is taken by the Learned Civil Court shall be binding on the respondents.

I have neither called for affidavits, nor have I decided the merits of the suit. The allegations contained in the writ petition shall be deemed not to have been admitted. The Learned Civil Court shall decide the suit without being influenced by any observation contained in this judgment. I however, point out that the writ petitioner has admitted in paragraph 3 of the plaint that the lands used to belong to the respondent no. 1 and the respondent no. 4, on behalf of the respondent no. 1 has admitted by the notices impugned that possession of the writ petitioner of the concerned lands is without permission of the respondent no. 1. These admissions will bind the parties before the Learned Civil Court. The writ petition is disposed of with the above directions. There shall be no order as to costs. The respondent no. 4 shall act on a website copy of the present order, on the usual undertakings that the writ petitioner shall cause to be obtained a certified copy of this order.