
(2007) 09 CAL CK 0024
In the Calcutta High Court
Case No : Writ Petition No. 23766 (W) of 2006

Bikash Roy

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 21-09-2007

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 17, 17(1), 20

Citation : (2008) 1 CHN 554

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Kalyan Bandopadhyay and S.M. Rahaman, for the Appellant; Mrinal Kanti Das and S. Das, Ashok Sarkar and Swapan K. Pal, for the Respondent

Judgement

Dipankar Datta, J.—Since these writ petitions involve common questions of fact law, they have been heard together and would be governed by this common judgment and order.

2. Bikash Roy [petitioner in W.P. No. 23766 (W) of 2006] claims to be the owner of Plot No. 937, Khatian No. 1853, Mouza Naul, Police Station Shyampur in the district of Howrah while Ashim Mondal and two others [petitioners in W.P. No. 23765 (W) of 2006] claim to be owners of Plot No. 937, Khatian Nos. 1858, 1851 and 1857 respectively within the same mouza as aforesaid. It is their claim that their names have been recorded in the records of right and they are paying rent to the Government in respect thereof.

3. It is the further claim of the petitioners that originally the plots belonged to one Nalini Prakash Ghoshal and the private respondent in both the petitions, viz. Shyam Charan Prodhan was the bargadar.

4. It has been brought to the notice of this Court that a proceeding had been initiated before the Block Land and Land Reforms Officer, Shyampur II being Barga Case No. 30/97 u/s 17(1)(a)(b)(c) of the West Bengal Land Reforms Act (hereafter the said Act) for termination of barga cultivation by the private

respondent at the instance of the erstwhile owner, i.e. Nalini Prakash Ghoshal. It appears that by an order dated 12.11.99, cultivation of the lands in question by the private respondent as bargadar was terminated u/s 17 of the said Act. By the said order, it was also directed that the issue be put up before the B.O.B.S.S. meeting for selection of a new bargadar. An appeal was preferred against such order by the private respondent, which failed. The appellate authority by its order dated 15.6.01 had dismissed the appeal. The order of the appellate authority was called in question by the private respondent before the Land Reforms and Tenancy Tribunal and by judgment dated 17.10.01, the petition filed by the private respondent was dismissed.

5. It has also been brought to the notice of this Court that the Sub-Divisional Land and Land Reforms Officer, Uluberia, Howrah has since permitted conversion of classification the lands in question belonging to the petitioners from shali to bastu.

6. The common grievance which has been expressed in these writ petitions is that the petitioners intended to raise construction on their respective plots of land but have been prevented from doing so by the private respondent who sought to dispossess them on the ground that he is still a bargadar in respect thereof and that complaint lodged by the petitioners with the local police station praying for assistance has not been heeded to. The main prayer in these writ petitions, to the extent common, is as follows:

A writ in the nature of mandamus commanding the respondent Nos. 2 and 3 give police protection to your petitioner at the time of his conversion work and further please be commanding the respondents authorities to retrained the respondent No. 4 from disturbing and interfering to the petitioner peaceful possession which has been petitioner are authorities/legal right of petitioner being Plot No.... Mouza Naul, Police Station Syampur, District Howrah, and police posting at the time of work as per demarketing scatch by the accepting necessary charges for police posting cost.

7. Mr. Bandopadhyay, learned Senior Counsel for the petitioners submitted that bargadarship of the private respondent having been long terminated which has been upheld by the appellate authority and confirmed by the Land Reforms and Tenancy Tribunal and the concerned lands classification having been changed from shali to bastu, there is no question of the private respondent cultivating the same since the same are no longer cultivable; and that disturbances created by the private respondent in respect of peaceful possession of the concerned lands by the petitioners is absolutely illegal and arbitrary. He urged that in view of commission of cognizable offences by the private respondent, the police authorities ought to have taken appropriate steps on the basis of the complaints lodged by the petitioners so as to prevent him from raising any obstruction and/or creating any disturbance. He referred to the decision of the Apex Court reported in P.R. Murlidharan and Others Vs. Swami Dharmananda Theertha Padar and Others, , for the proposition that in appropriate cases, a Writ Court may

direct the police authorities to render assistance and this being two such appropriate cases where the right, title and interest of the petitioners in respect of the concerned lands have been determined, the police should be directed to render assistance so that the petitioners are in a position to erect construction on their respective plots of land.

8. Mr. Das, learned Senior Counsel appearing for the private respondent vehemently opposed the petitions. According to him, though bargadarship of the private respondent has been terminated, such termination order has not yet been executed in terms of provisions contained in Section 20 of the said Act read with Rule 9 of the Bargadar Rules framed thereunder and so long the order of termination is not executed, the private respondent cannot be dispossessed by an executive fiat or with the help and assistance of the police authorities. He relied on the decision of the Apex Court reported in Mohan Pandey and Another Vs. Smt. Usha Rani Rajgaria and Others, , for the proposition that in case of a civil dispute between private parties concerning an immovable property, the proper course for the Writ Court would be to relegate the disputing parties to a civil suit for establishing their property rights and, therefore, this Court should decline interference. He also relied on the decision in P.R. Murlidharan (supra) to contend that the law laid down therein would not empower the Court of Writ to interfere in a case of the present nature where facts are disputed.

9. This Court is of the considered view that the lands in respect whereof the private respondent once upon a time was a bargadar having ceased to be cultivable lands, execution of the termination order as provided in the said Act and the Rules framed thereunder would not be necessary, since, any claim which the bargadar may have had to cultivate the same till the order is executed stood extinguished once classification of the lands was converted to bastu. The contention of Mr. Das in this respect has failed to impress this Court.

10. In course of hearing these petitions, this Court had directed the Superintendent of Police, Howrah to enquire and report regarding steps taken by the police authorities on receipt of the complaints lodged by the petitioners and further as to which party is in possession of the concerned lands.

11. The reports filed by the Superintendent of Police in Court though reveal that there is no cultivable lands at present but that the private respondent and his family members are in possession of the concerned lands is clearly borne out by it.

12. No exception to the reports filed by the Superintendent of Police have been taken by the petitioners by filing an affidavit and it is difficult for this Court, in such circumstance, to disbelieve its contents. This Court is conscious that merely because a party disputes certain facts, the same would not be sufficient enough to take it beyond the realm of writ jurisdiction and in appropriate cases the Writ Court would be justified in adjudicating issues involving questions of facts which might be disputed. See: ABL International Ltd. and Another Vs. Export Credit

Guarantee Corporation of India Ltd. and Others, . However, what would be an appropriate case must depend on the facts of each case. But in a case of this nature where the private respondent has claimed possession of the concerned lands which also stands corroborated by the reports of the Superintendent of Police but has been orally disputed by Mr. Bandopadhyay, to arrive at a proper finding on factual aspects would necessitate appreciation of evidence to be led by the parties and ultimately result in the Court of Writ embarking on a fact finding investigation. Ordinarily, the Writ Court does not investigate factual disputes and that too, in respect of a dispute between private parties concerning an immovable property. It is only when a statutory duty cast on an authority is not discharged by it would the question of interference by the Writ Court arise. No doubt the private respondent's bargadarship has been terminated and that classification of the concerned lands has also since been converted, but these facts do not tilt the balance in their favour of the petitioners, since, not as a bargadar in the real sense of the term, but even as a trespasser the private respondent may be possessing the concerned lands and no direction can issue from the Court of writ to activate the police authorities to facilitate his dispossession therefrom on the basis of the orders passed by the authorities under the said Act as well as the Land Reforms and Tenancy Tribunal or to give protection to the petitioners when possession of the concerned lands by them is in grave doubt since it is no part of the statutory duty of the police to evict alleged unlawful occupier as well as to put someone in possession without there being a decree from the appropriate Civil Court. Procedure has been laid down by law for eviction/dispossession of persons unlawfully in possession (which includes even a trespasser) as well as for restoration of possession and due process has to be initiated in accordance therewith. It would thus be appropriate for this Court to reserve the petitioners' liberty to approach the appropriate forum and seek relief from it, if so advised and no direction of the nature prayed for is warranted on facts and in the circumstances.

13. It appears from the reports filed by the Superintendent of Police that the situation is peaceful. However, maintenance of law and order and prevention of commission of offences being the statutory duty of the police authorities, it shall be their duty to ensure that law and order is maintained in the locality and that there occurs no breach of peace. If any complaint is lodged with the police authorities disclosing commission of offence, action in accordance with law shall follow.

With the aforesaid observations, these writ petitions stand disposed of. There shall be no order for costs. Needless to record, this Court has not adjudicated on the property rights of the disputing parties before it and all points are left open to be decided by the appropriate forum, if approached, uninfluenced by any observation contained herein. Photostat copy of this judgment and order, duly countersigned by the I Assistant Registrar (Court) be retained with the records of W.P. No. 23765 (W) of 2006. Urgent photostat certified copy of this judgment, if applied for, be furnished to the applicant within 3 days from date of putting in

requisites therefor.

Dipankar Datta, J.