
(2019) 08 CAL CK 0158

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 10804 (W) Of 2013

Debarshi Chakraborty

APPELLANT

Vs

State Of West Bengal & Others

RESPONDENT

Date of Decision : 09-08-2019

Acts Referred:

Citation : (2019) 08 CAL CK 0158

Hon'ble Judges : Thottathil B. Radhakrishnan, C.J;Arijit Banerjee, J

Bench : Division Bench

Advocate : Milan Chandra Bhattacharjee, Sulagna Bhattacharya, Biswajit Mukherjee, Arijit Dey, P. Nath, Supratim Dhar, Dhananjay Nayak, Debes Kr. Mishra

Final Decision : Disposed Of

Judgement

We have heard learned senior counsel appearing for the petitioner and Mr. Dhar, learned counsel for the State as well as Mr. Nath, learned counsel appearing for the respondent no.11.

Upon hearing the learned Advocates on the basis of the material papers on record, we see that it is sufficient that we refer to the affidavit sworn to by Pabitra Kumar Mondal on 21st March, 2017 stated to be in compliance with the order dated 22nd July, 2016.

While we say so, we record the submission made on behalf of the petitioner that the deponent of that affidavit is the Special Secretary in the Land & Land Reforms Department while the order dated 22nd July, 2016 issued by this Court was one calling for an affidavit- in-opposition by none other than the Additional Secretary, Land & Land Reforms Department.

Learned Counsel appearing for the State has explained the situation by stating that, at that point of time, there was no Additional Secretary and the Officer immediately in command after the Principal Secretary in the Land & Land Reforms Department was the Special Secretary and this is how the said affidavit came to be sworn to by the Special Secretary.

He also points out that even the affidavit as originally drafted was prepared to be sworn to by the Additional Secretary and this can be seen from the fact that the designation of the Officer had to be corrected in the first paragraph of the affidavit from "Additional Secretary to Special Secretary".

The salient features of the facts, which emanate out of the aforesaid affidavit sworn to on 21st March, 2017, are available in paragraphs 4 and 5 thereof, which read as follows :-

"4. That the picture of settlement is narrated below:-

a) 14 decimal land is settled with West Bengal Housing Board.

b) 0.0495 Acre is settled to Shyamshree Biswas (Pal).

c) 0.0495 Acre is settled to Smt. Srilekha Biswas (Pal).

d) 0.811 Acre is settled to Bithika Guha Sarkar.

e) 0.811 Acre is settled to Satyajit Guha Sarkar.

5. That the description of the vested areas of plot No.4283 of Mouza-Kasba, J.L. No.13 is narrated below :

a. The total area of the plot is 2.71 acre.

b. 1.36 Acre (50%) is vested and 1.35 Acre (50%) is rayiti.

c. 47 decimal is settled to different persons which is narrated in paragraph 4, above.

d. 0.12 Acre is settled with one Tapan Dutta but due to non payment of Government dues the procedure of cancellation is under process.

e. 0.15 acre is used as road.

f. 0.20 acre is used as play ground.

g. 0.08 acre is involved in WPLRT No.260 of 2014, Sabita Halder -VS- State of West Bengal and Ors. and Hon'ble Division Bench was pleased to issue order of status quo."

Learned counsel for the respondent no.11 has pointed out that the vested lands and rayati lands have not been demarcated among themselves. We also notice that the total area of the plot was 2.71 acres, out of which 1.36 acres was the vested area. We see that the narration in the affidavit of the Special Secretary discloses the details of the holdings and the settlements made.

Learned counsel appearing for the State also submits that the Government leases over the vested lands are matters of record and they are identifiable on the basis of the records.

The contention of the petitioner is that there are unauthorized occupants on the

vested land area of 1.36 acres. This includes those who clandestinely hold out or attempt to show title to the property, which really does not exist. The assertion made by the petitioner in the writ petition and the affidavits as well as through photographs is that certain real estate promoters or builders and developers have put up constructions and utilizing the land for commercial activity without the sanction and authority of law and, essentially, by trespassing into the property.

The fundamental fact situation, therefore, which arises for decision, is as to whether the State Government has to protect the vested land except those persons who have been identified or given leases by the State under its lawful authority, who are legitimately holding those properties under such authority of the State. It is within the power of the State in terms of the Statute relating to conservation of the Government property to take such action as would be necessary to dispossess and remove the squatters and trespassers and thereby recover the vested land due to be under the control of the State.

In the aforesaid format of facts, we also notice that the so-called builders and real estate promoters, who have been impleaded, have not responded to the notices issued by this Court. Therefore, to conserve the property of the State, as may be found to be involved out of 1.36 acres, referred to in paragraph 5(b) of the aforequoted portion of the affidavit of the Special Secretary, it is directed that the Principal Secretary, Land & Land Reforms Department to the Government of West Bengal, who is also stated to be the Land Revenue Commissioner, will take due action in accordance with law to consider all aspects relating to the entire extent of 2.71 acres and ensure that there is clear demarcation between the vested land of 1.36 acres and rayati land of 1.35 acres. Thereupon, the extent, which has been granted under lawful authority of the Government to different persons out of 1.36 acres of vested land, shall also be ascertained. After demarcating the boundary between the vested portion and rayati portion, the vested portion will be subjected to such further enquiry as is deemed necessary including demarcation of the lands which have been given on lease by the Government.

On conclusion of such enquiry with requisite notice to all persons eligible to receive such notice, the Principal Secretary of the Land & Land Reforms Department, who is also the Land Revenue Commissioner, will ensure that due process of law is invoked and requisite statutory proceedings are initiated to remove the persons who are in unlawful occupation, illegal possession or squatting over the land. Any unauthorized construction and the construction over land which are not those over which construction could be made, shall be ultimately ensured to be pulled down and the land cleared thereof. The land vested in the Government should remain in the government under its complete control and physical possession to be dealt with by the Government, as may be enjoined by the laws.

Let such exercise be carried out by the Principal Secretary, Land & Land Reforms

Department / Land Revenue Commissioner within an outer limit of six months from the date of receipt of a copy of this order. We clarify that all issues raised intra-parties as also those which may arise between other persons, who may be eligible to participate in proceedings before the Land Revenue Commissioner, will be left open and the matter shall be decided by the Land Revenue Commissioner untrammelled by anything stated herein.

With the aforesaid directions, the writ petition stands disposed of.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.