
(2019) 09 CAL CK 0249

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 5304 (W) Of 2012

Durgadas Maji & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 20-09-2019

Acts Referred:

Requisitioned Land (Continuance Of Power) Ordinance, 1946 — Section 3
Defence Of India Rules, 1930 — Rule 75A

Citation : (2019) 09 CAL CK 0249

Hon'ble Judges : Shampa Sarkar, J

Bench : Single Bench

Advocate : Arunava Ghosh, Pinaki Dhole, Soumitra Bandopadhyay, Aniruddha Sen, Rahul Sarkar, Saikat Das, nup Kr. Podder, Ayan Podder

Final Decision : Disposed Of

Judgement

Shampa Sarkar, J

This writ petition has been filed by persons who claimed right, title and interest through their predecessors in respect of plot nos. 703,704,650,651,653 and 654 in Mouza Chganda, J.L. No.29, P.S. Jamuria, District Burdwan, now Paschim Bardhaman.

Reliance is placed on the judgement and decree passed by the Civil Judge, Junior Division at Asansol Court in Title Suit No.49 of 1994. The relevant portion of the decree is quoted below:?

"The suit coming on this day for final disposal before Sri Fatick Chandra Mondal, Civil Judge, Jr. Division, Addl. Court, Assansol, in the present of Sri Debdas Mukherjee, advocate for the plaintiff and Sri Shyamal Mukjherjee, advocate for the defendant, it is ordered and decreed that the suit be and the same is decreed on contest without costs against the defendant nos. 3 to 9 and exparte without costs against defendant nos.1&2. Further, it is ordered that plaintiff do get decree of declaration that the plaintiffs got right, title and interest and

possession over the suit lands described in the schedule of the plaint and the RSROR recorded in 1964 by the defendants no.5 in suomotu proceeding u/s 44(2a) of the WBEA Act, erroneous other prayer are rejected."

Aggrieved by the aforementioned decree, the State of West Bengal & Ors. filed Title Appeal bearing no.26 of 1999. The said appeal was dismissed for default on March 28, 2002. No steps were taken by the appellants therein for restoration of the appeal. Thus, according to the petitioners the decree of the Civil Judge (Junior Division), Asansol, has become binding upon the parties to the suit. The petitioners have also taken steps for correction of record of rights in terms of the decree and judgement passed by the Civil Court. The said application is now pending before the West Bengal Land Reforms & Tenancy Tribunal.

The petitioners are aggrieved by a memo no. 21(3)/LA/NH2/BWN/12 dated January 10, 2012, issued by the National Highway Authority, under the National Highways Act, 1956. According to the said memo, the petitioners were informed that as the lands were recorded in favour of the name of Civil Aviation Department, Government of India, no acquisition proceedings were required to be carried out in respect of the plots of land in question if the same was required by the authorities for the proposed alignment of the six lane of National Highway? 2. Aggrieved by the aforesaid memo, the petitioners have approached this Court.

It is submitted on behalf of the State respondents that the said lands were requisitioned by the Ministry of Defence. That huge quantum of land of different mouzas Viz. Chanda, Saora, Ninga, etc. including the case land in the District of erstwhile Burdwan, presently Paschim Bardhaman was requisitioned by the Ministry of Defence, Government of the then British India, during the Second World war through Notification being Order No.713 L.A. dated 28.08.1942, under Rule 75A of the Defence of India Rules, 1930 in connection with Ninga Landing Ground. The said land was requisitioned under Section 3 of the Requisitioned Land (continuance of Power) Ordinance, 1946 (Ordinance XIX of 1946). Subsequently, the said land was acquired through issuance of Notices of acquisition of immovable property under Section 5(3)(a) of Ordinance XIX of 1946, notifying the same in the Calcutta Gazette dated Thursday, April 17th, 1947 in respect of the project - peace time Civil Aviation Scheme (Ninga Landing Ground). The entire land of Ninga Air Field was transferred to the Ministry of Communication (Civil Aviation Department) with effect from 1st April 1946. The land in question was recorded in the name of Civil Aviation Department in the R.S. Record of Right, framed and finally published under the provision of West Bengal Estate Acquisition Act, 1953. During the Acquisition process of lands in favour of National Highway Authority of India for the purpose of National Highway No.2, the case land was not included considering the same as the land of Civil Aviation Department, i.e. Government land. Mr. Podder, learned Advocate appearing on behalf of the respondent no. 5, submitted that the said authority was not a party to the suit and as such it was not bound by the judgement and decree of the Civil Court. He further submitted that the judgment and decree was

defective, as the question of acquisition of the land in 1947 was not discussed. He further submitted that the properties which were under the Civil Aviation Department had vested under the National Highways Act, 1956. The Airport Authority of India had stepped into the shoes of the National Airport Authority on and from 1994, Mr. Podder submitted that the suit should have been filed against the National Airport Authority of India and not the Civil Aviation Department. Mr. Podder further submitted that the area was an abandoned airport.

In reply to the aforesaid contention of the respondents, the petitioners have stated that the petitioners have continuously been in possession of the said land and once the entry in the record of rights in the name of the Civil Aviation Department, under the suo motu proceedings initiated by the State of West Bengal under the provisions of West Bengal Estate Acquisition Act, 1953 had been declared to be erroneous by the Civil Court, the claim of right, title and interest of the Airport Authority of India with regard to the said lands cannot be sustained in law. Records reveal that the suit was filed in the year 1987.

The Defendant no.1 was the Union of India represented by Ministry of Defence. The Defendant no.2 was the Civil Aviation Department under the Ministry of Civil Aviation & Tourism, who was represented by the Regional Director. The Block Land & Land Reforms Officer, Raniganj, was a defendant. The agent of Coal fields of Ningah, as also the Director General, Mines Safety, Government of India, were all defendants in the suit.

The record of rights had been prepared by the State respondents who were parties to the suit and are thus bound by the decree. Their appeal from the judgement and decree was also dismissed. Although, the National Airport Authority was not a party to the suit, the Civil Aviation Department, was a party. All rights, properties etc had vested in the Airport Authority of India by operation of law.

If the airport authority claims through the Civil Aviation Department, then the judgment and decree is also binding upon them. However, whether the lands of the petitioners are being used by the National Highways Act, 1956 while constructing the six lane, National Highway -2 on the strength of the record of rights and the alleged acquisition of 1947, cannot be decided in the instant proceeding.

The communication dated January 10, 2012 made by the competent authority under the National Highway Act, 1956, is also ambiguous and does not convey as to whether the plots of land of the petitioners were actually acquired by the Central government way back in 1974 or whether the construction of the proposed sixth lane of National Highway?2 would pass through the aforesaid lands. The petitioners are continuing in possession. The petitioners are apprehensive that pursuant to the said communication and erroneous entries in the record of rights with regard to the said plots of land in question, the National Highway Authority may evict the petitioners without following due process of law.

Under such circumstances, this writ petition is disposed of with liberty to the petitioners to approach the competent authority under National Highways Act, 1956 by filing detailed representation ventilating their grievances.

The concerned authority will decide on the basis of the submissions made by the petitioners, upon granting an opportunity of hearing to all concerned, namely, the petitioner, the National Airport Authority, the Block Land & Land Reforms Department and any other interested parties.

All concerned will be at liberty to produce such documents in support of their claim as may be necessary for proper decision in the matter. The judgment and decree of the Civil Court and the appellate court in favour of the petitioner will be taken into consideration. With regard to the allegation of encroachment, the petitioners are at liberty to approach the Civil Court.

A reasoned order should be passed and communicated to all concerned within a period of eight weeks from the date of receipt of the representation of the petitioners.

There will be however no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.