

(2023) 08 CAL CK 0040

In the Calcutta High Court

Case No : IA No.:CAN/1/2014, 2/2022 (Old No.:CAN/10597/2014) In WPA No. 16977 Of 2013

Firdosi Begum

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 11-08-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 144
Land Acquisition Act, 1894 — Section 4, 5A, 6, 7, 9 , 11, 16

Citation : (2023) 08 CAL CK 0040

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Tapas Kumar Ghosh, Tanmoy Choudhury, Somnath Gangopadhyay

Final Decision : Disposed Of

Judgement

Bibek Chaudhuri, J

1. It is the case of the petitioner that she is the absolute owner of LR plot No.327, J.L No.98, Khatian No.736, Mouza- Kaithi, Police Station-Kankartala in the district of Birbhum measuring about 4.17 acres of land by virtue of registered deed of sale dated 27th June, 2011. Since then she has been in possess of the said land by way of cultivation and also mutated her name in the LR Record of Rights. Subsequently, the petitioner came to notice few months before the date of filing of the instant writ petition that the Eastern Coalfields Limited, respondent No.2 herein represented by the respondent No.3, 4, 5 and 6 was illegally occupying more or less 3 acres of land of the petitioner and allowed her to cultivate only 1.17 acres of land. It is the case of the petitioner that though the aforesaid land never belonged to the Eastern Coalfields Limited, but the concerned authorities in a most arbitrary and whimsical manner constructed a small structure and, thereafter, started to keep the weigh bridge, which is also inoperative since long. The respondent authorities also started to stag chimni dust over the said land as well as the adjacent vast land occupied by them for

keeping their vehicles. It is alleged by the petitioner that the respondent No.2-6 without any permission of the petitioner in a most arbitrary, whimsical and mala fide manner continued their forcible possession/occupation over the personal land of the present petitioner and despite protest, they did not bother to vacate the land in question from their illegal occupation. The petitioner finally sent a demand justice on 28th June, 2012 through her learned Advocate with a request either to vacate the freehold land in her favour by removing all unauthorized structure and machineries or in the alternative to acquire the land in a lawful manner paying compensation and award as applicable under the prevalent statute. After receiving demand justice, the Senior Manager (Personal), Pandabeswar Area, Eastern Coalfields Limited sought for a clarification from the Manager of Kankartala Colliery and in reply to such clarification it was stated by the Manager by a Memo dated 20th August, 2012 that-

"a) Ownership of the land may be ascertained from the LRE and Legal Department respectively at area level."

2. Upon a proceeding under Section 144 of the Cr.P.C, the BL and LRO submitted a report to the Executive Magistrate, confirming the petitioner's case that the respondents were in illegal possession of 3 acres of land out of the purchased land of the petitioner and the said land never belonged to Eastern Coalfields Limited. On the other hand, the Eastern Coalfields Limited claimed that the said plot of land was in possession of the company by virtue of the Coal Mines Nationalization Act, 1973. It is the grievance of the petitioner that the respondents have been possessing the said land illegally without lawfully acquiring the same. In view of such circumstances the petitioner has prayed for issuance of a writ in the nature of mandamus commanding the respondent authorities to quit, vacate and deliver peaceful possession of the 3 acres of land in favour of the petitioner in LR plot No.327, Khatian No.736, JL No.98 of Mouza-Kaithi and forthwith restored the said land in favour of the petitioner. The petitioner also claimed damages for illegal possession of land in question.

3. The respondent No.2 filed affidavit-in-opposition on 17th December, 2017 challenging the maintainability of the instant writ petition. It is further submitted on behalf of the respondents that in the instant writ petition an interim order was passed on 19th August, 2014. The said order was challenged in MAT 51 of 2015 before the Division Bench of this Court wherein the Division Bench was pleased to observe that:-

"It is doubtful whether such dispute can at all be absolved in a writ proceeding".

4. It was also observed by the Division Bench that in case of any acquisition of the land in question under Act 1 of 1894 it is to be acquired following the provision contained in Sections 4, 5A, 6, 7, 9, 11 and 16 of the Act 1 of 1894 by the Land Acquisition Collector and not by the Union of India or the Eastern Coalfields Limited. It is further submitted on behalf of the respondents that under the provisions of the Coal Mines Nationalisation Act, 1973:-

(i) "(h)(vi) All the lands building, works, admits, levels, planes machinery and equipments instruments, stores, vehicles railways, tramways and siding in, or adjacent to a mine and used for the purpose of the mine.

(ii) (h)(vii) All workshops (including buildings, machinery, instruments, stores, equipment of such workshop and the lands on which such workshops stand) in or adjacent to a mine and used substantially for the purpose of the mine or a number of mine under the same management.

(iii) (h)(x) All lands building and equipment belonging to the owners of the mine and in adjacent to or situated on the surface of the mine where the washing of coal obtained from the mine on manufactures, thereform of coak is carried on.

(iv) (h)(xii) All other fixed assets, movable and immovable, belonging to the Owner of a mine, wherever situated and current assets, belonging to a mine whether within its premises or outside."

5. The Government of India has nationalised and taken over Kankartola Colliery along with other collieries in the district of Birbhum and they were regrouped and brought under Pandaveswar area. It is also stated by the respondents that after acquisition of colliery, compensation were paid to the respective private colliery owners. The land in question were all along under the occupation of Kankartola Colliery and it is revealed from RS Record of Rights that plot No.297 measuring and area of 4.17 acres was classified as danga and Kankartola Colliery was dhakalkar of the said land. The vendor of the petitioner had no legal right to sale the nationalized property in favour of the petitioner.

6. At the time of argument it is contended by the learned Advocate for the petitioner that the petitioner at this stage prays for either acquisition of land under the provision of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and after possession of the said land may be handed over Eastern Coalfields Limited the petitioner also prays for a job under the land losers category in Eastern Coalfields Limited.

7. Surprisingly enough no such prayer was made by the petitioner in the instant writ petition. Therefore, without any specific prayer and in absence of the pleading this Court is not in a position to grant any relief to the petitioner as submitted by the learned Advocate for the petitioner.

8. At the time of argument the learned Advocate for the petitioner has submitted that the land may be of Mouza- Kaithi, JL No.98 issued by the Deputy Manager, Kankartola Colliery. It is submitted by the learned Advocate for the petitioner that the plots marked with yellow colour are the land of Eastern Coalfields Limited. Plot No.327 is situated on the adjacent south of the plot No.330 and 333. The said plot is not under the possession of the respondents. However, the respondents have been illegally possessing the substantial portion of the said property measuring about 3 acres. The petitioner is entitled to get back possession of the said land.

9. I am afraid, the writ court cannot grant any order in the nature of a decree for recovery of possession. Efficacious relief of the petitioner lies in filing a suit for recovery of possession in the competent Civil Court.

10. In view of such circumstances, I do not find any merit in the instant writ petition. Accordingly, the writ petition is dismissed on contest, however without cost.

11. Along with the writ petition, all connected applications are also disposed of.

12. Interim order, if any stands vacated.