
(2016) 01 CAL CK 0114
In the Calcutta High Court
Case No : Writ Petition L.R.T. No. 159 of 2015

Gour Chandra Mallick @ Gour Mallik

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 20-01-2016

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 14T(3)

Citation : (2016) 3 CalHCN 675

Hon'ble Judges : Debasish Kar Gupta and Md. Mumtaz Khan, JJ.

Bench : Division Bench

Advocate : Dilip Kumar De and Arunava Pati, Advocates, for the Petitioner; L.K. Gupta and Ziaul Islam, Advocates, for the State

Final Decision : Disposed Off

Judgement

1. This is an application filed under Article 226 of the Constitution of India assailing an order dated June 23, 2015 passed by the West Bengal Land Reforms and Tenancy Tribunal, First Bench, in the matter of Gour Chandra Mallick v. State of West Bengal & Ors. [In Re: O.A. No. 1200/2013(LRTT)].

2. The fact which was taken into consideration by the learned Tribunal in a nutshell is as follows:

3. In a proceeding under Section 14T(3) of the West Bengal Land Reforms Act, 1955 the respondent No.4 passed an order dated June 20, 2004 in case No.72/97. By virtue of that order a land belonging to the petitioner measuring 4.28 acres, be a little more or less, vested in favour of the State. The petitioner preferred a statutory appeal bearing Case No. 42/2004.

4. It was submitted by Mr. Dilip Kumar De, learned Advocate appearing on behalf of the petitioner, that he was a member of "Paschim Banga Rajya Bhumi jibi Sangha" and one Special Leave to Appeal (Civil) No. 1416/1997 was pending before the Hon'ble Supreme Court. It was further submitted that by an order dated November 24, 2003 in I.A. No. 1 arising out of Special Leave to Appeal

(Civil) No. 1416/1997, the Hon"ble Supreme Court directed the authorities of the State to ensure, notwithstanding the vesting orders that might be passed and mutation that might be affected in the revenue records, no third party rights should be created and no such third parties be inducted or allowed to enter upon and squat on such properties pending disposal of the appeal.

5. After hearing the above submission, the statutory appellate authority dropped the above appeal bearing Case No. 42/2004. The petitioner filed an original application bearing O.A. No. 1200/2013(LRTT) before the learned Tribunal and the order dated June 23, 2015 passed by the learned Tribunal is impugned before us in this writ application.

6. For adjudication of the propriety of the above order, the operative portion of the same is quoted below:

"In paragraph 7(b) of the application, the applicant has prayed for an order commanding the respondent to give relief to the applicant which he is entitled under the law. We are of the opinion that this prayer also covers his grievance against the order dated 29.01.2008 of the Appellant Authority.

Accordingly we dispose of the application by setting aside the order of appeal passed by the Appellate Authority vide order dated 29.01.2008. Ld.

Appellate Authority should proceed with the appeal according to law after giving opportunity of hearing to all concerned the appeal should be disposed of within a period of six (6) months from the date of communication of the order. However if the applicant is able to establish before the appellate authority that he was really one of the writ petitioners before the Hon"ble High Court in connection with said matter or one of the added parties to whom the benefit of order dated 24.11.2003 was extended, in that case, the appeal should be disposed of on merit but no third party interest should be created in the vested land till disposal of the matter pending before the Hon"ble Apex Court" applicant is directed to communicate the order together with copy of the application along with the annexure to the Appellate Authority within four weeks from the date getting certified copy of this order.

In this term O.A. No.1200/2013 is, thus, disposed of.

Let a plain copy of this order duly countersigned by the Principal Officer of the Tribunal be made over to the Ld. Govt. Representative for communication to the concerned Authority for information and compliance and exerox certified copy of the order, if applied for by the applicant be delivered subject to payment of requisite court fees."

7. According to Mr. De, the order impugned is not sustainable in law. The conclusion of the learned Tribunal to the effect that the Hon"ble Apex Court gave protection to the writ petitioners being members of the aforesaid "Paschim Banga Rajya Bhumiijibi Sangha" against allotment of vesting land or third parties by maintaining their possession, as it was, till disposal of the above Special Leave to

Appeal. According to him, the petitioner was entitled to enjoy the benefit of the aforesaid interim relief granted by the Hon"ble Apex Court by virtue of the aforesaid order dated November 24, 2003.

8. It is submitted by Mr. L.K. Gupta, learned Additional Advocate General, State of West Bengal, that the order dated November 24, 2003 covered those properties in respect of which the authorities were not only passing orders vesting properties which had been alleged and claimed to be in the possession of the parties proposed to be impleaded, in the name of the State and they were effecting mutation in the name of the Collector, but, on account of such procedure, it was feared that third party rights were likely to be created either by way of inducting directly or indirectly by backdoor others to the detriment of those, who, according to those persons, were also interested in the matter.

9. We have heard the learned Counsel appearing for the respective parties at length and we have also considered the facts and circumstances involved in this writ application.

10. For examining the propriety of the order impugned, the order dated November 24, 2003 passed by the Hon"ble Supreme Court in I.A. No. 1 arising out of Special Leave to Appeal (Civil) No. 1416/1997 is quoted below:

"Hear learned counsel appearing on either side.

Mr. Gopal subramania, learned senior counsel submits that pending further hearing and disposal of the matter, the authorities which are alleged and claimed to be in the possession of the parties proposed to be impleaded, in the name of the State and they are effecting mutation in the name of the Collector, but, on account of such procedure, it is feared that third party rights are likely to be created either by way of inducting directly or indirectly by back door others to the detriment of those, who, according to the petitioners, are also interested in the matter.

Per contra, Mr. T.C. Ray, learned senior counsel submits that any further orders in the matter is likely to delay the implementations of the scheme of Land Reforms in the State and, therefore, no further orders are required, as claimed for the proposed petitioners.

On a careful consideration of the respective submissions of the learned counsel appearing on either side, we are of the view that the authorities of the State shall ensure notwithstanding the vesting orders that may be passed and mutation that may be effected in the revenue records, no third party rights should be created and no such third parties be inducted or allowed to enter upon and squat on such properties pending disposal of the appeals.

Liberty to mention for early hearing granted I.A. No. 1 is disposed of on the above terms."

11. We find substance in the above submissions made on behalf of the

petitioners. In view of the above, the observations made by the learned Tribunal in the impugned order that the interests of those persons were protected by the Hon"ble Supreme Court who were not only the members of the aforesaid "Paschim Banga Rajya Bhumijibi Sangha" but also the writ petitioners was not correct.

12. Therefore, the order impugned is modified partially to the effect that the statutory appellate authority is directed to proceed in the matter afresh adhering to the interim relief granted by the Hon"ble Supreme Court in its aforesaid order dated November 24, 2003 passed in connection with I.A. No.1 arising out of Special Leave to Appeal (Civil) No. 1416/1997 provided the petitioner fulfils the condition that the petitioner claimed to be in the possession of the property in respect of which the authorities are not only passing order of vesting and effecting mutation in the name of the Collector, but, on account of such procedure, attempts are being made to create third party right.

13. This writ application is, thus, disposed of.

14. There will be, however, no order as to costs.

15. Urgent photostat certified copy of this order be supplied to the parties, if applied for, subject to compliance with all necessary formalities.