

(2014) 10 CAL CK 0008
In the Calcutta High Court

Case No : M.A.T. No. 1094 of 2013, C.A.N. No. 7572 of 2013, F.M.A. 2994 of 2013 and C.A.N. No. 8508 of 2013

Kamalesh Chakrabarti and Others

APPELLANT

Vs

Ashis Patra and Others

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 50

Citation : (2015) 2 CHN 513

Hon'ble Judges : Manjula Chellur, C.J;Arijit Banerjee, J

Bench : Division Bench

Advocate : Biswajit Basu, Koushik Chatterjee and Sanjoy Kumar Nag, Advocate for the Appellant; Swapan Kumar Nandi, Sandip Kumar De, Asok Banerjee and Krishna Deo Das, Advocate for the Respondent;

Final Decision : Disposed off

Judgement

1. These two appeals are preferred against a common order passed by the learned Single Judge on July 08, 2013 in W.P.C.R.C. 249 (W) of 2013. It is necessary to mention the background under which the present appeals are filed in order to appreciate the stand of the parties before us. The appellants in MAT 1094 of 2013 are the beneficiaries of certain land by virtue of land acquisition proceedings and according to them, they are in possession of the land that was acquired for the purpose of playground and hostel building of the School run by them. According to them, after completion of the land acquisition proceedings they had deposited the compensation amount and even an award was passed to the said effect. Apparently they seem to be beneficiaries as predecessors in title of the writ petitioner did challenge the acquisition proceedings and the same went against them in the litigation. This is so far as the acquisition proceedings. Subsequent to the acquisition proceedings, by virtue of section 50 of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as the Act of 1955), the beneficiaries of the land had applied for change of mutation in their favour and the same came to be disposed of by BL & LRO by another proceeding after due

notice to the writ petitioners, who took part in the proceedings.

2. It is not in dispute that on February 13, 2013, the BL & LRO agreed with the contentions raised by the beneficiaries of the land and directed the changes in the revenue records so far as the names of the parties. Therefore the name of the School Authorities came to be incorporated as the owners of the land in the place of erstwhile owners from whom the land was acquired.

3. Challenging the issuance of the notice under section 50 of the said Act of 1955 issued by the Authority concerned on the application filed by the School Authorities, it is pertinent to mention that subsequent to February 13, 2013 order, which went against the writ petitioners, who not only filed appeal before the Tribunal challenging the order dated February 13, 2013 but also filed writ petition not disclosing the orders passed in favour of the beneficiaries i.e. order dated February 13, 2013 before the learned Single Judge; in other words the Statutory Appellate Authority constituted for effecting mutation changes in terms of section 50 of the said Act of 1955 did give opportunity to the writ petitioners and the genuineness or otherwise of the notice under section 50 of the said Act of 1955 could also be challenged before the Statutory Appellate Authority i.e. District Collector and thereafter the matter has to come before the Tribunal constituted under the Act concerned. However, it is left to the discretion of the parties how they would proceed with the litigation.

4. The fact remains not disclosing the order dated February 13, 2013 the present writ petition is filed wherein an order of status quo came to be passed on February 28, 2013. By virtue of order dated February 13, 2013 the School Authority was entitled to have mutation effected in their names but factually the said change of mutation was not implemented till February 28, 2013.

5. It is not in dispute that the order of status quo passed by the learned Single Judge as well as implementation of order dated February 13, 2013 was done on February 28, 2013. Apparently the School Authorities were not parties before the learned Single Judge, however, the Government Advocate represented the State on February 28, 2013. According to the learned Advocate for the State, the appellant in MAT 1094 of 2013, after recess at about 2.00 p.m. the matter was taken up by the learned Single Judge and order of status quo came to be passed. In the normal course of business, the intimation of the same or the outcome of the proceedings in the Court would be intimated to the concerned Authority. It is not in dispute that the contemnors were not present. before the Court on February 28, 2013. Except the presence of State Advocate, presence of the alleged contemnors has not been mentioned. Then coming to the violation of the directions of the learned Single Judge which amounts to contempt against the contemnors, it is by way of implementing the order dated February 13, 2013 by effecting mutation changes. According to the State Advocate, such change of mutation was effected in the computer in the morning hours at the request of the parties and therefore they did not even anticipate the order of status quo would be passed in the afternoon. Hence there was no wilful disobedience of any nature

so far as the directions of the learned Single Judge on 28th February, 2013.

6. However, the learned Single Judge, after hearing the parties, so far as the alleged contempt said to have been committed proceeded to opine respondent Nos. 3 and 4, the Revenue Officer as well as the BL & LRO had knowledge of filing of the writ petition on 18th February, 2013, as the copy of the said writ petition was served on them on 25th February, 2013 and the same was pending. Therefore, there was no justification in implementing the order dated February 13, 2013 on February 28, 2013.

7. In order to understand whether there is contempt committed as alleged, one has to see whether such disobedience of the direction is wilful or not as wilful disobedience of the direction of this Court alone would amount to a civil contempt. The writ petitioners are not controverting the statement of the State that the order of the status quo came to be passed only after 2 p.m. and correction in the computer was made in the early hours of the day i.e. before forenoon. We fail to understand how one can conclude there is wilful disobedience of the order of the Court dated 28th February, 2013. In order to opine that a person has committed contempt there has to be sufficient material indicating that with the knowledge of directions of the Court intentionally disrespected the direction of the Court. No such material is forthcoming by which one can conclude there is wilful disobedience of the order. Even pendency of the writ petition cannot be a ground to opine that there was wilful disobedience of the direction or that the parties ought to wait till disposal of the writ petition in the absence of any positive direction being communicated to the alleged contemnors.

8. Even otherwise when the order dated 13th February, 2013 had to be challenged before the Statutory Appellate Authority constituted under the said Act of 1955 we fail to understand after disposal of the application before the BL & LRO how a writ petition was maintainable challenging the notice issued under section 50 of the said Act of 1955 as the writ petitioner could raise such challenge before the Statutory Appellate Authority.

9. In the light of the above observations we opine that MAT 1094 of 2013 is not maintainable, so far as the FMA 2994 of 2013 is filed by the contemnors against whom the directions were issued.

10. In the light of the above discussion we allow FMA 2994 of 2013 and all the consequences of the said order is also set aside. In other words the order dated February 28, 2013 implementing or effecting mutation bringing the name of the school authorities in the record of right is in order unless the same is set aside by any Statutory Authority or any Court competent to pass such order.

11. With these observations both the appeals are disposed of along with the connected applications. Certified copy of this order, if applied for, be given to the parties, on priority basis.