

(2022) 07 CAL CK 0102
In the Calcutta High Court
Case No : Criminal Revision No. 1914 Of 2019

Kamonasish Mistry

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 28-07-2022

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 4C, 4D
Inland Fisheries Act, 1984 — Section 17, 17A
Code Of Criminal Procedure, 1973 — Section 41A(1), 482

Citation : (2022) 07 CAL CK 0102

Hon'ble Judges : Ajoy Kumar Mukherjee, J

Bench : Single Bench

Advocate : Duke Banerjee, Swapan Banerjee, Suman De

Final Decision : Allowed

Judgement

Ajoy Kumar Mukherjee, J

1. The petitioner has prayed for quashing the impugned proceeding being Sonarpur P.S. Case No. 746/18 dated 15.05.2018 under section 4 D of West Bengal Land Reforms Act 1955 (WBLR Act) read with section 17 of Inland Fisheries Act, 1984, pending before learned Additional Chief Judicial Magistrate, Baruipore, South 24 Parganas.

2. Petitioner contended that petitioner purchased 4 Cottahs of Bastu land along with 300 Sq. ft. incomplete building at Mouza-Sonarpur, J.L. No. 39, in R.S. Dag No. 1747 corresponding to R.S. Khatian No. 616 in the year 2017.

3. Said 4 Cottahs of land which he purchased from one Archana Mondal was previously "Sali" in character but concerned B.L. & L.R.O., Sonarpur in view of a conversion proceeding initiated by petitioner's vendor was pleased to convert character of said land from Sali to Bastu and issued certificate of conversion U/S 4C of W.B.LR. Act vide Memo No. 41/68/BL/SNP/dated 09.01.2017. The aforesaid R.S. Dag. No. 1747 is a plot comprising of 45 decimal of land. Although in R.S.

record of rights the entire 45 decimal of land stands recorded as "Sali" but physically a pond comprising of 8 Cottahs of land exists adjacent to petitioner's 4 Cottahs of Bastu land. Municipal authority has also recorded petitioner's purchased 4 Cottahs of land as Bastu which is reflected in mutation certificate issued by Municipal authority

4. Petitioner further submits out of his 4 Cottahs of land $\frac{1}{2}$ Cottah of Bastu land got eroded into the said adjacent pond and for which petitioner wanted to construct a guard wall with bamboo and tin, in order to protect his Bastu land from further erosion.

5. A club in the locality demanded huge money from the petitioner and also from petitioner's vendor. They denied to pay money to club and for which club members raised objection and petitioner was compelled to stop the construction of the guard wall. Subsequently petitioner received a notice under section 41 (A) (1) of Code of Criminal Procedure (Cr.P.C.) dated 15.05.2018 and came to know that aforesaid criminal proceeding has been initiated with an allegation that a mass petition was submitted to the office of Rajpur Sonarpur municipality and chairman without perusing his own record that the 4 Cottahs of land purchased by petitioner has been recorded by the municipal authority as "Bastu", forwarded said letter to the Sonarpur police Station and the aforesaid case was initiated by police. Although adjacent 8 Cottah of pond that responsible for the erosion of petitioners Bastu Land, is not the land of the petitioner and it belongs to some other person, but police authority selectively sent notice under section 41 (A) (1) Cr.P.C. to the petitioner, which the petitioner complied. The investigating agency submitted charge-sheet on 25.03.2019 in the aforesaid proceeding under section 17 of Inland Fisheries Act, 1984 reserving a liberty to submit supplementary charge-sheet after receiving report from BLLRO Sonarpur.

6. Mr. Duke Banerjee, learned Counsel on behalf of the petitioner submits that filing of the charge-sheet under section 17 A of the Inland Fisheries Act, 1984 is blatantly illegal because conversion under section 4 C of WBLR Act has been lawfully done in connection with said 4 Cottahs purchased land and proceeding under section 4D of the WBLR Act is strictly prohibited under WBLR Act, as said purchased 4 Cottahs of land already settled as Bastu complying formalities under section 4 C. He further contended that section 17 A of Inland Fisheries Act is not applicable in this case as the land in question is comprising of only 4 Cottahs of Bastu Land and section 17 A contemplates over an water area including embankment covering 5 Cottah or more. Here petitioner purchased Bastu Land and not water area, measuring only 4 Cottahs and out of which $\frac{1}{2}$ Cottah got eroded into the adjacent pond. Accordingly no case stands against the petitioner as petitioner's purchased 4 Cottahs of land has already been settled by BLLRO, Sonarpur as "Bastu".

7. Mr. Swapan Banerjee on behalf of the state submits, investigation has already been ended in charge-sheet and the case is pending for trial and at this stage it would not be proper to quash the entire proceeding, invoking power under

section 482 Cr.P.C., without taking evidence. Opposite party no.2 remained unrepresented inspite of service of notice.

8. From the annexure it appears that the petitioner Kamonasish Mistry purchased 4 Cottahs of land from Smt. Archana Mondal vide deed dated 26th July, 2017 and in the schedule of the deed it has been clearly mentioned that petitioner's purchased land is comprising of 4 Cottahs of Bastu Land in plot No. 1730 (RS Plot No. 1747) within Mouza Sonarpur, J.L. No. 39. It further appears that in the plan annexed with the deed petitioner's 4 Cottahs of land is shown in the map, which is adjacent to the pond. It further appears that petitioner's vendor Archana Mondal started a conversion proceeding and obtained a certificate from the office of the BLLRO on 09.01.2017 wherein said plot No. 1747 under Khatian No. 616 within Sonarpur Mouza an area of 6.60 decimal out of total area of 0.45 acre has been converted from "Sali" to "Bastu". It also appears from the copy of the Mutation certificate in the name of petitioner that in the record of Rajpur Sonarpur Municipality, said purchased land of the petitioner measuring 4 Cottahs has been duly recorded as "Bastu Land".

9. On perusal of the written complain it appears that resident of inner road had sent a mass petition to the chairman of Rajpur Sonarpur Municipality on 4.05.2018 alleging that tank measuring 8 Cottah in plot No. 1747 is the only water body in the local area which is being used by the local people but some selfish person for their personnel gain are trying to fill up the water body illegally and from the Charge-sheet it appears that it has been submitted against the petitioner under section 17A of the Inland Fisheries Act, 1984 though petitioner is not the owner of the water body.

10. On perusal of the case diary it appears that during investigating police has only recorded statement of two witnesses who has stated that there is a water body in the Notun Pally under ward No. 12 but the petitioner and his father Arbindo Mistry are trying to fill up the said water body.

11. Having considered the facts and circumstances of the case and from the Photostat copies of documents marked as Annexure, petitioner has established that he has not purchased any water body but he has purchased a specific 4 Cottah of land as delineated in the Map annexed with the deed, which is "Bastu" in nature and previous to his purchase said land has been duly converted from Sali to Bastu by the vendor of the petitioner in compliance with section 4C of WBLR Act and that the purchased land of the petitioner measuring 4 Cottahs is much less than 5 Cottahs of land and is a "Bastu", I am of the view that by no stretch of imagination said land can be used as fishery and as such neither section 4D of the WBLR Act nor section 17 of the West Bengal Fisheries Act, 1984 attracts in the present case. Even if there is any boundary dispute between the parties, such dispute is purely civil in nature and criminalization of boundary dispute even by a good number of people is impermissible and not sustainable in law.

12. In view of landmark judgments in the State of Haryana Vs. Bhajan Lal, reported in AIR 1992 SC 604, the court can quash proceeding where complaint does disclose a prima facie cognizable offence or where the allegations in the petition of complaint or the FIR are inherently improbable or absurd or when the petition of complaint or the FIR is mala fide one, intended to harass the opponent or when no evidence of legal character is available or when there is legal bar to entertainability of application. In the present case in view of lawful conversion of purchased land of petitioner under section 4 C, proceeding in respect of section 4 D of WBLR Act in respect of said land is barred and further more the purchased land being Bastu Land and not a water body and measuring 4 Cottah only, section 17 of Fisheries Act has got no application in respect of petitioner's said Bastu Land. So the allegations levelled in the FIR is absurd, inherently improbable and barred by law and is merely an attempt to give a cloak of criminal offence over a probable civil dispute, and as such there is no chance of conviction even if the proceeding is allowed to be continued.

13. In view of above I find that this is a fit case where invoking power under section 482 of Cr.P.C. entire proceeding should be quashed.

14. CRR 1914 of 2019 is thus allowed. Let all further proceeding being Sonarpur P.S. Case No. 746/2018 dated 15.05.2018 along with charge-sheet no. 1131/18 dated 31.07.2018 filed in connection with aforesaid proceeding is hereby quashed.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.