
(1997) 02 CAL CK 0042
In the Calcutta High Court
Case No : C.O. 8686 (W) of 1996

Massdak Hossain

APPELLANT

Vs

State of W.B. and Others

RESPONDENT

Date of Decision : 03-02-1997

Acts Referred:

Transfer of Property Act, 1882 — Section 107
West Bengal Panchayat (Gram Panchayat Miscellaneous Accounts and Audit) Rules,
1990 — Rule 22(1)

Citation : AIR 1998 Cal 270

Hon'ble Judges : N.K. Bhattacharya, J

Bench : Single Bench

Advocate : R.D. Manna and M. Alam Sk, for the Appellant; P.P. Chowdhury and Jayanta Kr. Das, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Bhattacharya, J.—Heard the submission of the learned Advocate for the petitioner Mr. Ramdulal Manna appearing with Mr. M. Alam Sk., the learned Advocate for the State, Mrs. Pratima Prativa Chowdhury and the learned Advocate for respondent No. 7, Mr. Jayanta Kr. Das. Considered the materials on record.

2. The matter relates to a particular pond though actually it is a lake named as "Pir Pukur". having an area of 2.78 acres. According to the petitioner, he took lease of the said pond from Daulatpur Gram Panchayat for a period of 10 years starting from 18th April, 1992 to be ended on 31st March, 2001. Further allegation of the petitioner is that the said pond was settled by way of lease by the then Prodhan of Daulatpur Gram Panchayat, P.S. Harischandrapur, Dist-Malda, in terms of certain resolution. Be it mentioned that the said Prodhan has not been made a party in this case, nor the members of the Gram Panchayat have been made parties in this writ application. It has further been stated that for 10 years the said pond was settled with the petitioner at Rs. 1705/-. As per

the writ application the lease agreement was an oral one and on the basis of the agreement, the petitioner spent about Rs. 60,000/- for the purpose of evicting the persons who were in forceful occupation of that pond. That apart, the petitioner had to spend a large sum of money for development of that pond for pisciculture and for other ancillary development and with the coming of the new Gram Panchayat, by a notice dated 22nd April, 1996, as in annexure "G" to the affidavit-in-opposition the Sub-Divisional Officer, Malda, respondent No. 3, cancelled that lease. That is the subject-matter of challenge before this Court. There was a further development after filing of the writ application. The State authority or the respondents Nos. 3, 5, 6 and 7 tried to resettle the pond for which there was a contempt application and since then there was no threat of taking of the pond and the contempt application failed.

3. According to Mr. Manna, the learned Advocate for the petitioner, later this pond along with other ponds were settled to other persons for more than 3 years by the then prodhan in conjunction with the Gram Panchayat. The prodhan respondent No. 7, was a member of the Gram Panchayat at that time. Mr. Manna further submitted that as the lease was created for a period of 10 years, that cannot be cancelled behind the back of the petitioner and according to the petitioner, as per the principle of "Audi alteram partem", a hearing is to be given to his client.

4. According to Mr. Das appearing for the Prodhan respondent No. 7, as the lease was created for more than 3 years, it is hit by Rule 22(1) of the West Bengal Panchayat (Gram Panchayat Miscellaneous dues and Accounts) Rules, 1990. That is also the submission of Mrs. Chowdhury appearing for the State.

5. Having heard the submissions of the learned Advocates for the parties and considering the materials on record, it appears to me that no legal lease was created to the petitioner according to the law of the land. In order to create a lease for more than a year there must be a deed which has got to be registered. In the instant case, there was no, lease though it was contended that regarding other cases, such lease was created and that was a very exceptional position of law. Imperative of law does not depend upon the consent of the party. Secondly, as has been stated, that the lease was an oral one preceded by an oral agreement. It appears that every-thing was oral in this matter and what was the actual terms of that oral agreement, are not known to the Court. This is a glaring example from which it appears that everything was done without imperative of the law and dictate thereof.

6. Let a copy of this judgment be sent to the Government for looking into the matter so that the matter can be set at rest and may proceed towards the right direction. It gives an inner sight of how money power is employed for the illegal acts in deprivation of the public exchequer. Properties of the Government or for that the Panchayat have been made a subject of booty of persons of political linkage to raise their own property and for financial gain in deprivation of the public interest at large. If that be the style of functioning then it cannot be said

that it is an welfare State and it is acting for the welfare of the public or for welfare of the common people.

7. As there was no lease, I am of the view that the petitioner has no legal right over the pond, and the writ application fails and stands dismissed. As I have already directed for sending a copy of this judgment to the Government, I hope that the Department concerned of the Government will look into the matter. I leave the matter here, Interim order stands vacated. The application filed on 29-8-96 is thus disposed of.