
(2014) 06 CAL CK 0026
In the Calcutta High Court
Case No : W.P.L.R.T. No. 163 of 2014

Sarbeswar Giri

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 18-06-2014

Acts Referred:

Citation : (2014) 4 CHN 293

Hon'ble Judges : Jyotirmay Bhattacharya, J; Ishan Chandra Das, J

Bench : Division Bench

Advocate : Amit Pan and Nibaran Kumar Das, Advocates for the Appellant; Lalit Mohan Mahata and Prasanta Behari Mahata, Advocates for the Respondent

Judgement

Jyotirmay Bhattacharya, J.—This litigation has a long chequered history. However, presently we need not give the vivid description of the earlier proceedings held in different Courts and Tribunals between the parties. Suffice it to indicate that the State-respondent failed to establish its plea that the land in dispute stood vested in the State under the provisions of the West Bengal Estates Acquisition Act in the suit filed by Smt. Krishna Rani Shasmal (owner of the land) in the Court of the learned 1st Additional Munsif, Diamond Harbour. The said suit being Title Suit No. 1 of 1994 filed by Smt. Krishna Rani Shasmal was decreed on contest against the State-respondent with a clear finding that the State-respondent has not been able to prove by any evidence that the suit property was vested in the State under the provisions of the West Bengal Estates Acquisition Act. The right, title and interest of Smt. Shasmal in the suit property was declared and the State-respondent was restrained from interfering with the possession and title of the plaintiff in the suit property.

2. The State-respondents did not prefer any appeal challenging the said judgement and decree of the Learned Civil Court. As such, the judgement and decree which was passed by the Learned Civil Court attained its finality. The State-respondents thus cannot take any stand contrary to the finding which was arrived at against the State-respondents in the said suit in any collateral

proceeding before any forum whatsoever.

3. The present dispute before us is a dispute raised by the writ petitioners who claim to be the bargadars in respect of the disputed land under the land owner. The Division Bench of this Hon"ble Court while disposing of a writ petition being W.P.L.R.T. 771 of 2002 directed the concerned B.L. & L.R.O. to consider the petitioners' claim by treating the tribunal application as their representation in accordance with law and in compliance with the order passed by the Learned Civil Court.

4. Be it mentioned here that the petitioners claimed in the said writ petition being W.P.L.R.T. 771 of 2002 that their names be recorded as bargadars in respect of the disputed land under the land owner.

5. The petitioners' such representation was ultimately rejected by the concerned B.L. & L.R.O. and the said order of the concerned B.L. & L.R.O. was ultimately affirmed by the Learned Tribunal in the impugned order.

6. On perusal of the impugned order passed by the Learned Tribunal on 25th March, 2014 in Case No. MA 855/12 (OA 1476/2008) (LRTT), we find that the Learned Tribunal also rejected the petitioners' said application by holding that since the disputed land of the land owner was vested in the State under the West Bengal Estates Acquisition Act, the relief which the petitioners claimed in the said proceeding cannot be granted.

7. The legality and propriety of the said order of the Learned Tribunal is under challenge in this writ petition at the instance of the petitioners herein.

8. Before entering into the merit of the writ petition, we feel it necessary to mention here that the State Government has already settled the disputed land by grant of Pattas. The Patta holders are in possession of the disputed land.

9. Since the issue regarding vesting of the disputed land under the West Bengal Estates Acquisition Act has already been set at rest by the Learned Civil Court in the judgement and decree passed by the Learned 1st Additional Court of the Munsif, Diamond Harbour as mentioned above, it goes without saying that the Pattas which were granted in favour of the Patta holders are now required to be annulled.

10. The concerned Sub-Divisional Officer is thus directed to annul the Pattas granted in favour of the Patta holders and recover possession from them in accordance with law.

11. The next question is to whom the possession of the disputed land is to be restored by the State Government.

12. It is no doubt true that if ultimately it is established that the writ petitioners are the bargadars under the land owner, then certainly possession is to be restored with the petitioners herein. On the contrary, if it is found ultimately that the writ petitioners were not bargadars in respect of the disputed land under the

land owner, then possession is required to be restored to the land owner and/or the person from whom possession was taken by the State.

13. Thus, we find that restoration of possession of the disputed land is to be decided in the light of the decision to be taken by the concerned B.L. & L.R.O. on the claim of the petitioners as to their bargadarship in respect of the land in dispute under the land owner.

14. The concerned B.L. & L.R.O. is thus directed to decide as to whether the petitioners were the bargadars in respect of the land in dispute under the land owner and take the ultimate decision thereon by passing a reasoned order after giving a reasonable opportunity of hearing to the petitioners and the land owner. Such decision should be taken by the concerned authority positively within a period of twelve weeks from the date of communication of this order with this rider that the annulment proceeding should also be concluded by the concerned Sub-Divisional Officer, Kakdwip in the meantime, so that possession of the land in dispute can be restored to the deserving party as per the decision to be taken by the concerned B.L. & L.R.O. in the said proceeding immediately after the dispute as to the bargadarship of the petitioners under the land owner is decided by the concerned B.L. & L.R.O.

15. Considering long pendency of this litigation, we make it clear that the time limit which is fixed hereinabove either for disposal of the annulment proceeding or for disposal of the dispute as to the existence of relationship between the parties as that of bargadars and land owner should be regarded as peremptorily fixed by this Court.

16. Needless to mention here that record of rights should also be corrected in the light of the decision to be taken by the concerned B.L. & L.R.O. on the dispute regarding bargadarship between the land owner and the petitioners.

17. The impugned order is thus set aside. The writ petition thus stands allowed.

18. Let the affidavit-of-service filed in Court today, be kept with the record. Urgent Photostat certified copy of this order, if applied for, be furnished to the applicant as early as possible.

Ishan Chandra Das, J.

I agree.