
(2011) 06 CAL CK 0053
In the Calcutta High Court
Case No : Writ Petition No. 7451 (W) of 2007

Shyamal Ghosh

APPELLANT

Vs

Knshnagar Municipality

RESPONDENT

Date of Decision : 09-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133

Citation : (2011) 5 CHN 336

Hon'ble Judges : Ashoke Kumar Dasadhikari, J

Bench : Single Bench

Advocate : Tapas Kr. Bhattacharya, for the Appellant; Biswarup Biswas for the respondent Nos. 4 to 9 and Swapan Kumar Majumdar for respondent Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Ashoke Kumar Dasadhikari, J.—The writ petitioner is aggrieved against the notice issued by the Chairman/ Vice-Chairman, Krishnagore Municipality addressing the petitioners and others to appear before him on 11th November, 2006 at 1 p.m. and the issuance of another letter to the Additional District Magistrate (L.R.) with a request for deputing one Amin for surveying the land and lane adjacent to the writ petitioners at Baghadanga in Ward No. 17, Krishnagore Municipality, being annexure P5 and P6 to the writ petition. It was contended on behalf of the petitioners in paragraph 3 of the writ petition that the petitioners' predecessor had been enjoying and possessing the above-said land and after the death of their father petitioners as heirs have been using and possessing the said land as courtyard which were or are, not used as pathway by anybody though the said plot of land has been recorded as "Road" in the record of right standing in the name of Phani Bhusan Sarkar being rayat of the land in question. The petitioners claimed that they have installed a tube-well on the said land and have also erected a toilet since long.

2. It was further contended that the petitioners are using the said land recorded

as "Road" since long and an easement right has been created to the petitioners with regnrd to the said land. It was alleged in the writ petition that the respondent Nos. 4 to 9 and respondent No. 5 who have been making attempt to take possession the said land as their pathway or rasta which is situated within the courtyard of the petitioners" house and filed a civil suit in the year 1982. The said suit was dismissed and appeal preferred against that was also dismissed.

3. Although the petitioners were defendants in the said suit and the petitioners claimed their right of easement over and in respect of the said land, the learned Court rejected the same.

4. It was further contended that being unsuccessful in the Civil Court with regard to the right of the said land recorded as pathway the private respondents approached the learned Executive Magistrate, Criminal Court with an application u/s 133 of Cr.PC and the learned Executive Magistrate disposed of the said proceeding being No. 1603/EM/2006 and held therein that the said land is being used by local public as pathway and the petitioners (opposite parties in the said proceeding are obstructing the pathway. There is also a police report wherefrom it appears that the said pathway is in existence which is being obstructed by the writ petitioners" who are opposite parties in the said proceeding.

5. Being aggrieved against the order a criminal revisional application was filed and the petitioners obtained an order of stay. The said criminal revisional application has already been disposed of. But the writ petitioners very carefully omitted to disclose what order was passed in the said criminal revisional application. I also enquired from the learned Counsel appearing for the petitioners at the time of delivery of judgement that why this was not disclosed before this Court. The learned Counsel could not answer to that. This is very unfortunate situation. When somebody is coming before a Court he is expected to have come with clean hands. But in the instant case the petitioners have suppressed something which ought not to have done on their side.

6. However, the notice issued by the Krishnanagore Municipality and the letter issued to the Additional District Magistrate for surveying the property is in dispute or questioned in this writ petition.

7. The learned Counsel for the Krishnagore Municipality appeared and filed his affidavit-in-opposite wherein it appears that the writ petitioners are not the recorded owners of the plot in question which is also admitted by the petitioners in the statements made in their writ petition. A copy of the record had been produced wherefrom it appears that the plot of land is used as "Rasta" which indicates that it is used by the people of the locality or "para" as a road. The owner of that plot was Phani Bhusan Sarkar.

8. The Municipality has disclosed a writing on a non-judicial stamp paper by the successor of Phani Bhusan Sarkar that they have informed the Municipality to the effect that those plots are to be used as "Rasta" and they do not have any objection to that.

9. It was also stated there that, if someone wants to get the land to be recorded in his personal name, they have their objection to that. This document was disclosed by the Municipality. The Municipality also disclosed some representations wherefrom the people of the locality have claimed that they used this plot of land as "Rasta" for a long time and they have further claimed that the writ petitioners are trying to encroach on the land and in fact they have installed tube-well on the portion of that plot of land which was objected.

10. It was contended by the Municipality that in view of the declaration given by the successor of Late Phani Bhusan Sarkar giving the plots for user of the common people, the writ petitioners do not have any right over and in respect of those two plots.

11. It was also submitted by the learned Counsel for the Municipality that there was a fight in between some of the private respondents and the writ petitioners. In that suit the private respondents have failed to establish their right. However, it does not affect the right of passage and/or free egress and* ingress over the land in question by the local people and the residents of the locality.

12. It was further pointed out that in the judgment and decree of the Civil Court it was decided that the right as claimed by the petitioners have not been proved before the learned Court. It was clearly held that no conclusion would be arrived at on the available evidence and/or records that the writ petitioners (being the defendants in the suit) have any right over the land in question. Against that finding of the learned Civil Judge, First Court at Krishnagore, Nadia, the writ petitioners, being the defendants in that proceeding, do not prefer any appeal either.

13. The learned Counsel for the private respondents claimed their right over the land but the suit filed by them has already been dismissed.

14. It was contended by the private respondents that the writ petitioners do not have any locus standi to move this writ petition specially when they are not the owners in respect of the land in question and no easement right has been established by them before the Civil Court either, no declaration in their favour by any Civil Court is also there and therefore, they do not have any right to maintain this writ petition.

15. Heard the learned Counsel for the parties and considered the submissions and the relevant materials available on record. It appears from a plain reading of the writ petition that the writ petitioners are admittedly not the owners of the land in question. The claim of easement rights, as they have claimed before the Civil Court, has already been negated. Record of right produced by the Municipality shows that Phani Bhusan Sarkar is the raiyat over and in respect of the plot in question.

16. It also appears that from the declaration given by the successor of Late Phani Bhusan Sarkar that the plot of land has been given for user of common people as

"Road" and they have objected that this plot of land could not be recorded in favour of any private individual.

17. In my view the writ petitioners do not have any right or interest in respect of the land in question and therefore, they have no legal right also to maintain this writ petition questioning the notice issued by the Municipality or the letter issued to the Additional District Magistrate (LR) for survey. Uptil now there is nothing before this Court to show that the petitioners have any right, title and interest over and in respect of the property in question. The record of right produced before this Court shows that one Phani Bhusan Sarkar is the recorded owner of the plot of land which is used by the common people of the locality as "Road" as recorded in the record of right. The owner as recorded in the record of right being Late Phani Bhusan Sarkar or his successor do not want that the plot of land should be occupied by a private individual and/or recorded in favour of the private persons who are trying to encroach the land in question. The claim of easement right which was turned down before the Civil Court, has not been decided in favour of the writ petitioners at any point of time.

18. Therefore, it can be safely concluded that the writ petitioner have no locus standi to come before this Court to question the authority of the Municipality for surveying the land in question. The writ petitioners being the third party cannot also encroach upon someone's land which is not at all permissible and they also cannot obstruct the common user of the "Road" as recorded in the record of right.

19. Accordingly, I dismiss this writ petition. There would be no order as to costs. Urgent photostat certified copy, of this order, if applied for, be furnished to the appearing parties on priority basis.