

(2018) 01 CAL CK 0032
In the Calcutta High Court
Case No : 11484(W) of 2007

Sisir Kumar Haldar

APPELLANT

Vs

The State of West Bengal & Ors.

RESPONDENT

Date of Decision : 03-01-2018

Acts Referred:

[3998](#) Constitution of India, [3998-226](#) Article 226 -
Power of High Courts to Issue certain writs

[2864](#) West Bengal Land Reforms Act, 1955, [2864-51](#) Section
51(c) - Revision or preparation of the recor

Citation : (2018) 01 CAL CK 0032

Hon'ble Judges : Mir Dara Sheko

Bench : Single Bench

Advocate : Atarup Banerjee, Bapin Baidya, Ayan Banerjee

Judgement

1. Hearing is concluded in presence of both sides and the matter is taken up for disposal on merits.

2. Mr Atarup Banerjee being assisted by Mr Baidya representing the writ petitioner submitted that the petitioner obtained 35 decimals of land pertaining to plot no.166 of mouza Uttar Durgapur under Khatian No. 221, J.L. No.25 under Mathurapur police station in the district South 24-Parganas. Grievance is that although the strip of land on the northern side of plot no.166 was lying under possession of the writ petitioner, but the mouza map was not prepared in accordance with the area owned and possessed by the writ petitioner which situates on the northern side as a part and parcel of plot no.166. With such grievance the petitioner prayed for direction in the nature of mandamus upon the respondents, so that the mouza map of Uttar Durgapur may be corrected in terms of the report held by the amin by way of survey so that the respondents taking advantage of not incorporating the said strip of land on the northern end of plot no.166 may not raise any construction on road etc by making encroachment upon the said land.

3. Mr Ayan Banerjee representing the State, however, raising the point of maintainability in view of section 8 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 submitted that the writ petitioner chose a wrong forum.

4. Let the mouza map and the supplementary affidavit towards the affidavit-in-opposition as filed be taken on record.

5. During course of hearing Mr Atarup Banerjee submitted that by this time pursuant to the report of the amin held by way of survey the proposed correction is going to be taken in the relevant office and the map after such correction is on the way of publication. It is obvious that jurisdiction so far as giving direction for correction of record of rights or mouza map by judicial order has become barred by introduction of section 8 of the 1997 Act vis-a-vis section 51(c) of the West Bengal Land Reforms Act, 1955. But the civil court has not been debarred to determine the entitlement of the aggrieved party to the concerned property despite incorrect recording or incorrect depiction of the area in the mouza map. Therefore, the civil court in other way enjoys the unfettered power for making the incorrect record of rights or even mouza map to bring in correct direction. But equally, the High Court within the ambit of writ jurisdiction under Article 226 of the Constitution is not estopped to give appropriate direction to the relevant authority to take proper and correct action, if it had been taken inappropriately.

6. Therefore, taking the lis of this writ petition which by this time is on the way of publication after correction in the mouza map, as apprised of by Mr Banerjee, learned counsel for the writ petitioner, the writ petition is allowed with direction upon the respondent no.2 to make good by taking appropriate decision towards final publication of the mouza map covering plot no.166, provided all formalities are complete.

7. The interim order as was passed by this court is held accordingly to have been merged with the final order.

8. Certified photocopy of this order, if applied for, shall be given to the parties.