

(1996) 08 CAL CK 0008
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction (Original Side) W.P. No. 3624 of 1993

Snehangshu Majumdar and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 07-08-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Land Reforms Act, 1955 — Section 40
Mines and Minerals (Development and Regulation) Act, 1957 — Section 21(1), 21(2)
Penal Code, 1860 (IPC) — Section 290, 379, 447
West Bengal Land Reforms Act, 1955 — Section 4(2), 4C, 4D
West Bengal Minor Minerals Rules, 1973 — Rule 30

Citation : (1998) 3 CALLT 234

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Advocate : Mr. Kamalesh Bhattacharjee, for the Appellant; Mr. J. Islam, Mr. Prabhat Kr. Chattopadhyay, Mr. Zafirul Islam and Mrs. Husn-Ara-Begum, for the Respondent

Judgement

R. Pal, J.—The writ petitioners claim to have been carrying on the business of brick manufacturing business under the name of "Raja Brick Field" in lands within the Police Station of Hasnabad since 1985. They have challenged at FIR dated 5.10.93 lodged by the BL & LRO in the Hasnabad Police Station in which it has been alleged inter alia that the petitioners had unauthorisedly converted the character of land and extracted and removed brick earth without any quarry permit and without payment and were liable to prosecution u/s 40 of the Land Reforms Act, 1955. Rule 30 of the West Bengal Minor Minerals Rule. 1973. section 21(1), 21(2) of the Mines and Minerals (Regulation and Development) Act, 1957 and sections 290/379/ 447 of the Indian Penal Code. An interim order was passed on 14.10.93 inter alia restraining the respondents from arresting the petitioners and also restraining the respondent authorities from interfering with the business of the petitioners. This interim order was subsequently extended on 19.11.93 till the disposal of the writ petition.

2. On 23rd November, 1993 twenty-two persons intervened in the proceedings and were added as parties. These added respondents then filed an application for vacating the interim order of injunction passed on 14th October 1993 as extended on 19.11.93 and for dismissal of the writ petition and for initiation of contempt proceedings against the petitioners.

3. By an order dated 7th July 1994 the application was directed to be treated as the affidavit-in-opposition to the main application and directions were also given to the writ petitioner to file an affidavit-in-reply. On 25th November, 1994 a second application was filed by the applicants for the same reliefs as their earlier application.

4. The facts that emerge from the pleadings show that the writ petitioners have filed this writ application in gross abuse of the process of court. The added respondents are the owners of the lands on which the writ petitioners seek to run their brick field business. Some of the added respondents had leased out their lands to the writ petitioners in 1982 for 10 years with an option for renewal. The option was not exercised by the added respondents. Despite this the writ petitioners remained in possession of the lands and continued their brick business. The added respondents made several representations to the authorities to stop the writ petitioners business. Being aggrieved by the respondent authorities failure to stop the alleged illegal business of the writ petitioners, the added respondents had filed a writ petition on 12.11.92 (C.O. No. 15228 (W) of 1992; hereinafter referred to as the first petition). An interim order had been passed on the first writ petition filler alia directing the Collector North 24-Parganas to consider the representation of the applicants dated 28th April 1992 and to dispose of the same by 5.12.92. The Collector was also to submit a report to the court on 8.12.92 and to see that no statutory violation took place. The writ petitioners herein were the respondents Nos. 10 and 11 in the first writ petition. Not only were they served with a copy of the first petition but they were cognizant of all proceedings therein.

5. As on steps were taken by the Collector pursuant to the order dated 12.11.92 in the first writ petition, on 12th January 1993 an order was issued directing the Collector to appear in person to explain why he had not carried out the order. The Additional District Magistrate appeared in court and prayed for time for complying with the order. On 4th February 1993 the Additional District Magistrate submitted a report before the court. The report shows that the Additional District Magistrate draw up miscellaneous proceeding and disposed of the matter in two stages. In the first stage the Sub-Divisional Land and Land Reforms Officers, Basirhat was directed to cause a field enquiry to be held on various points including the authority of the writ petitioners to operate a brick field in the land and whether they were quarry permit holders. After the field enquiry report was received, the Additional District Magistrate heard the parties at length and recorded the submissions of the parties. Before considering the submission of the parties the Additional District Magistrate framed three issues :

"(1) If, the raiyats are under obligation to renew the lease executed 10 years back;

(2) If the operation of the brick field has got any polluting effect in the area as alleged by the writ petitioners:

(3) If the brick field owners are authorised to carry on their manufacturing business and (4) if sections 4(2a)(b) and 4C of the WBLR Act as has been mentioned in the representation have been violated and if so what action is to be taken for such violation."

6. On the first issue the Additional District Magistrate held that since the Raiyats (the added respondents herein) were totally unwilling to renew the lease, the writ petitioners should immediately close down the brick field and hand over possession to the Raiyats. On the second issue also the Additional District Magistrate found in favour of the applicants. On the third issue the Additional District Magistrate found that the land had been illegally converted without the permission of the Collector in violation of section 4C of the West Bengal Land Reforms Act. It was also found that the writ petitioners had acted in violation of section 21(1) and (2) of the Minor Minerals (Regulation and Development) Act, 1957 and Rule 30 of the West Bengal Minor Minerals Rules 1973. It was accordingly ordered that the Sub-Divisional Magistrate, Basirhat with the help of Sub-Divisional Land and Land Reforms Officer should take action against the writ petitioners u/s 21 of the 1957 Act read with Rule 30 of the 1973 Rules. The UL & LRO was also authorised to lodge a complaint in the court of the Sub-Divisional Magistrate at Basirhat u/s 4D of the 1958 Act against the added respondents.

7. In view of the report of the Additional District Magistrate the first writ petition was disposed of on 3rd March 1993 without passing any further order but granting leave to the parties to take appropriate proceedings challenging the report in the appropriate Forum in accordance with law. The respondents however were directed not to give effect to the report for a period of four weeks.

8. Being aggrieved by this order the added respondents preferred an appeal (FMAI 1040 1993). The appeal was disposed of by a Judgment on 4th June 1993 directing the Collector to implement the report in accordance with law.

9. By an order dated 23rd September 1993 the Additional District Magistrate who is also the District Land and Land Reforms Officer directed the SDL & LRO, Basirhat to take immediate action to stop the illegal operation of the brick field. The BL & LRO was directed to lodge a complaint against the added respondents u/s 4D of the West Bengal Land Reforms Act, 1955 and to lodge an FIR against the brick field owners (the writ petitioners herein) in the given format. The BL and LRO was also instructed to file a certificate case against the writ petitioners for realising the outstanding dues upto 92-93. The BL & LRO was also directed to approach the Sub-Divisional Officer, after lodging an FIR against the writ petitioners to ensure that the police seized the brick field materials and stopped the operation of the brick field.

10. It was pursuant to this direction that the FIR impugned in the writ petition was lodged by the BL & LRO against the writ petitioners. On 7th October 1993, the SDO, Basirhat, the SD & LRO. Basirhat, BL & LRO, Hasnabad and the Officer-in-Charge Hasnabad Police Station closed down the brick field. The writ petitioners moved a writ petition before N.A. Chowdhury-J during the vacation but no interim order was passed. Suppressing all the aforesaid facts the writ petitioners moved the present writ petition and obtained the ex parte order of injunction on 14.10.93 without making the added respondents parties.

11. According to the added respondents, they did not know anything about the filing of this writ petition and on 19th November. 1993 appeared before the SDO. Basirhat and prayed that possession of the lands may be made over to them. The SDO directed the Chief Inspector. Hasnabad Police Station to make over possession of the land to the added respondents. It is the added respondent's case that on the strength of the ex parte injunction order dated 14.10.93. the writ petitioners re-entered the properties and restarted the brick manufacturing business.

12. At the hearing the writ petitioners' submission was three fold :

(1) That the BL & LRO had no authority to lodge the FIR under the 1957 Act as he was not authorised to do so;

(2) That the land was not agricultural land since it had been used for the last 10 years as a brick field and cess and royalty had been paid;

(3) That section 4D was not applicable to the writ petitioners as they were admittedly not Raiyats.

13. The writ petitioners having deliberately suppressed the very material facts relating to the first writ petition are not entitled to any relief at all. Had the court been told that the FIR which has been impugned in this proceeding was the culmination of proceedings in the first writ petition and in obedience to the orders passed in the first writ petition, the court would not and indeed could not have entertained this writ petition. The writ petitioners have deliberately duped the court by presenting a seemingly innocent challenge to the FIR. ensuring that the truth did not emerge. The report of the ADM/ BL&LRO which was directed to be implemented by the appellate court in the first writ petition and pursuant to which the BL & LRO filed the FIR was not even referred to far less challenged. Further the added respondents who are vitally interested in the matter were deliberately excluded as party respondents. The writ petitioners have set one court against another. Whereas the Division Bench directed the respondent authorities to implement the report and to take action thereon, the ex parte ad interim order in this writ petition directed the respondents in effect to do just the opposite. Such callous and improper utilisation of the judicial process is contumacious.

14. The writ petition is liable to be dismissed on this ground alone.

15. Even on the merits the petitioners cannot challenge the FIR. The FIR was filed in implementation of the report. The report was not challenged. The appellate court had directed the report's implementation. No appeal has been preferred from the appeal court's order. The writ petitioners are at liberty to agitate their grievances in the proceedings initiated by the FIR.

16. For all these reasons the writ application is dismissed with costs assessed at 200 gms. Such cost to be paid to the added respondents within a fortnight. All interim orders are vacated.

Let xerox copies of the judgment duly signed by the Assistant Registrar of this court, be given to the parties upon their undertaking to apply for the certified copies of the judgment and on payment of usual charges.

17. Application dismissed