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Calcutta High Court

Case No: W.P.L.R.T. No. 724 of 2007

Sudhangshu Sekhar Prodhan	APPELLANT
Vs	
State of West Bengal	RESPONDENT

Date of Decision: Nov. 26, 2010

Acts Referred:

- West Bengal Estates Acquisition (Amendment) Act, 1955 - Section 5
- West Bengal Estates Acquisition Act, 1953 - Section 10(3), 5A, 5A

Citation: (2011) 4 CHN 142

Hon'ble Judges: Pratap Kumar Ray, J; Harish Tandon, J

Bench: Division Bench

Advocate: Shyama Prasad Purkait, for the Appellant; Murari Mohan Das and Tanusri Pal Chowdhury for the State, for the Respondent

Final Decision: Allowed

Judgement

Pratap Kumar Ray, J.
Heard the learned Advocates appearing for the parties.

2. Mr. Murari Mohan Das, learned Advocate appearing with Ms. Tanusri Pal Chowdhury, learned Advocate, has not disputed the factual premises of the writ application.

3. Assailing the order dated 3rd May, 2007 passed in O.A. No. 1287 of 2007 (LRTT), this writ application has been filed.

4. By the impugned order before us, learned Tribunal below dismissed the O.A. on the ground of non-availability of alternative remedial forum in the form of appeal under the statute.

5. The impugned order reads such.

" 3/5/2007

OA-1287/2007(LRTT) appears in the list under the heading "MOTION".

Today ld. G.R. is absent. On his behalf, Mr. Kalam, SRO-II is present.

Heard the Id. Advocate for the applicant.

The applicant has filed the instant original application praying for an order commanding the respondents to cancel, or revoke and/or rescind and/or withdraw and or recall the order dated 23.2.2007 passed by the BLLRO, NAMKHANA in Misc. Case No. 1/04 arisen out of order in OA-2242/2003 and further to direct the concerned respondent to correct the relevant record of rights of the petitioner in the light of the judgement/ order dated 21.4.1980 passed by the learned District Judge, 3rd Court, Alipore in E.A. Appeal No.8/78 forthwith as directed by the Hon"ble Court in OA-2243/2003. Thus, it appears from the record that the applicant has come before this Tribunal challenging the order dated 23.2.2007 passed by the BLLRO, NAMKHANA in Misc. Case No. 1/04 and that order is appealable and as such, the applicant has not availed of all the remedial measures available to him under the relevant specified Act.

Ld. Lawyer for the applicant submits that the BLLRO concerned has not passed that order in terms of the judgement and order dated 21.4.98 passed by the ld. Additional District Judge, 3rd Court, Alipore and also not in terms of the order passed by this Tribunal in OA-2242/2003.

It appears from the record that the applicant filed OA-2243/2003 and this Tribunal passed an order dated 15.12.2003 directing the BLLRO concerned to treat the copy of the application as a representation of the applicant taking into consideration the judgement and order passed by the ld. Third Court, Additional District Judge, Alipore passed in EA Appeal No.8/78.

Similar prayer was also made by the applicant in that concerned OA and this Tribunal passed necessary order and again he has come before this Tribunal against the order passed by the BLLRO without availing of remedial measures and also praying for the similar prayer for directing the authority concerned to correct the relevant record of rights of the petitioner in the light of the judgement and order dated 21.4.80 passed by the ld. Third Court, Additional District Judge, Alipore. That portion of the order cannot be entertained in the same manner as this Court passed necessary order on this point in OA-2242/2003.

Regarding other portion, the applicant is to avail of all the remedial measures in the form of filing appeal.

Section 10 of section (3) of W.B.L.R.& T.T.Act, 1997 reads as follows:

Save as expressly provided in this Act, the Tribunal shall not admit an application referred to in sub-section (1) unless it is satisfied that the applicant has availed of all remedial measures available to him under the relevant specified Act and the remedial measures available under the provisions of the relevant specified Act are not adequate or shall cause any undue hardship to the applicant."

Thus, in the instant case, the applicant has not availed of all remedial measures available to him and there is no reasonable ground to plea that the measures available to him are not adequate or shall cause any undue hardship.

Under these circumstances, it is mandatory on the part of the Tribunal not to entertain the instant application as per provision of section 10(3) of the W.B.L.R. & T.T. Act, 1997. Hence, the instant OA-1287/2007 (LRTT) is hereby dismissed. However, the applicant may take appropriate steps before the appropriate authority against the concerned order.

Let a plain copy of this order duly countersigned by the Principal Officer of the Tribunal be made over to the ld. Government Representative for communication to the aforesaid BLLRO for compliance and a Xerox certified copy of the order be made over to the applicant/s, if applied for, on payment of requisite Court fees.

6. The case has a chequered history which will appear from our order dated 7th August, 2009 when we directed to add the concerned Revenue Officer as party by name and also granted liberty to the petitioner to amend the writ application seeking compensation.

7. The order dated 7th August, 2009 reads such.

"7.8.2009

W.P.L.R.T. No. 724 of 2007

Shyama Prasad Purkait for the petitioner;

Murari Mohan Das, Tanusri Pal Chowdhury for the State.

8. Heard-in-part.

9. Despite direction, no affidavit-in-opposition has been filed.

10. This case has a chequered history.

11. Initially a proceeding u/s 5A of the West Bengal Estates Acquisition Act being Case No. 6 of 1977-78 was initiated by the Revenue Officer concerned. He passed an order on 27th July, 1978 vesting the land of the writ petitioner, Sudhangsu Sekher Prodhan, being the land which was acquired by him by dint of Amalnama duly executed and registered by Brindaban Pramanik and Bibhuti Pramanik on declaring the said transfer as not bona fide transfer on the reasoning that transfer was effected within the mischief period u/s 5A of

the said Act. This order was challenged in a statutory appeal, registered as Special E.A. Appeal No. 8 of 1978, which was disposed of by the Third Court of the Additional District Judge, Alipore on 21st day of April, 1980 by quashing and setting aside the said order on positive finding that the transfer was a bona fide transfer on discussing the points therein. This appeal was heard wherein the State of West Bengal was a party and represented by the learned Advocate. Thereafter an application was filed to the concerned B.L. & L.R.O., Namkhana, District South 24-Parganas for necessary correction of the record of rights in terms of the judgement of said appeal. As nothing was done, the writ petitioner approached the West Bengal Land Reforms and Tenancy Tribunal in O.A. No. 2242 of 2003 (LRTT) which was disposed of on 15th December, 2003 by directing the B.L. & L.R.O., Namkhana, District South 24-Pargnas to treat the representation as an application and to dispose of the same within three months by passing a reasoned order on taking into consideration the judgement and order passed by the learned Third Court of the Additional District Judge, Alipore dated 21st April, 1980 in Special E.A. Appeal No. 8 of 1978 and by affording just, fair and reasonable opportunity of oral hearing to the applicant and other interested persons. In pursuance of the said order of the Tribunal, the concerned B.L. and L.R.O. initiated a Misc. Case No. 1 of 2004 and served a notice to the petitioner by registering a reference case no. Original Application No. 2242 of 2003 (LRTT). From the order-sheet passed in Misc. Case No. 1 of 2004 it appears that on 25th February, 2004 an order was passed by the B.L. and L.R.O., Namkhana, District South 24-Parganas by quoting the order of the Tribunal and thereby directing to issue notice to the parties. On 5th March, 2004 there is a noting in the order-sheet that notice was duly served. Thereafter, the matter was not heard. The writ petitioner approached the learned Tribunal again on the grievance that despite filing of the application for certified copy of the order as passed in Misc. Case No. 1 of 2004, no certified copy has been supplied. This application was registered as Misc. Application No. 1190 of 2004 in connection with Original Application No. 2242 of 2003 (LRTT) as was earlier disposed of.

12. By the order dated 15th February, 2005 this application was disposed of directing to supply the certified copy of the order, if any, was passed in the meantime. A contempt proceeding was initiated by the writ petitioner before the learned Tribunal due to inaction to comply with the said orders of tribunal and ultimately on 23rd February, 2007 the concerned B.L. and L.R.O., Namkhana, District South 24-Parganas, who was holding office at that time, passed a decision dated 23rd February, 2007 by only quoting the earlier order of the Revenue Officer passed in Case No. 6 of 1977-78 u/s 5A of the Estate Acquisition Act and fact of vesting of land to the Collector. There was no whisper in the said order that the order of the Revenue Officer passed u/s 5A of the said Act was set aside and quashed by the Appellate Authority in Special E.A. Appeal No. 8 of 1978 on 21st April, 1980 and the said Officer was directed by the Tribunal to consider that judgement and order while disposing of the application by the decision dated 15th December, 2003 passed in Original Application No. 2242 of 2003 (LRTT).

13. Assailing the said order dated 23rd February, 2007, the writ petitioner moved the Tribunal again in Original Application No. 1287 of 2007 (LRTT), but the Second Bench of the West Bengal Land Reforms and Tenancy Tribunal dismissed the application on the ground that there was a remedy to prefer an appeal before the Appellate Authority. This order is impugned before us in this writ application.

14. In this writ application in paragraph 18 the writ petitioner has taken a categorical point that the concerned officer, namely, B.L. and L.R.O., Namkhana, District, South 24-Parganas who was holding the post at the relevant time, passed the order on 23rd February, 2007 without taking note of the fact that the order of vesting in a proceeding u/s 5A of the Estate Acquisition Act stood set aside and quashed by the Appellate Authority. It has been contended that the said officer was biased and passed a decision rejecting the prayer of correction of the record of rights without considering the order of E.A. Appeal No. 8 of 1978 which was directed to be considered by the Land Tribunal in earlier Original Application on the basis of which the miscellaneous case was initiated. It has been further asserted that the concerned Officer passed the order to harass the petitioner.

15. Having regard to the factual matrix of the case and the ground as taken in the writ application, we are of the view that the gentleman who passed the order on 23rd February, 2007, by referring the order passed by the Revenue Officer u/s 5A of the Estates Acquisition Act which was set aside and quashed by the Appellate Authority, is required to be heard personally as the gentleman holding an office under the State of West Bengal as it appears prima facie from the records, failed to discharge his duty as a B.L. and L.R.O. His action prima facie is an action which could be termed as non-compliance of the direction of the Competent Court of Law, which may be considered as malice in law.

16. Having regard to such situation, leave is granted to the writ petitioner to amend the writ application as prayed for by adding the said officer as a party by name to consider the issue and for appropriate order to compensate the petitioner on hearing the point of bias as set up in the writ application against the said officer.

17. Let an appropriate amendment application be filed incorporating the pleading, the prayer and relief, by three weeks.

18. The matter will appear four weeks hence.

19. In the meantime, there will be a stay of the order dated 23rd February, 2007 passed in Misc. Case No. 1 of 2004 and further order of restraint restraining the respondents, their agents and subordinates not to give any effect and further effect of the said order. They are also restrained from distributing the said land by considering the same as vested land.

20. Since no affidavit-in-opposition has been filed, this Court in view of the special fact of this case wherein one Revenue Officer even did not care the order of the Court passed by the competent Appellate Authority under Estate Acquisition Act and the order of the Tribunal, respondent Nos. 2 and 4 should be directed to file their respective affidavits by answering the points as taken in the writ application within three weeks from this date. It is ordered accordingly.

21. Let xerox plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the learned Advocates appearing for the parties for communication on usual undertakings.

Sd/:

(Pratap Kumar Ray, J.)

Sd/:

(Mrinal Kanti Sinha, J.)

22. Addition of party was allowed by the order dated 5th January, 2009 by adding the concerned Revenue Officer of the material time as party in this proceeding by name. He is now added as respondent No.5.

23. One Affidavit-of-Service has been filed wherefrom it will appear that the copy of the writ application was served to him on 13th April, 2010.

24. Affidavit-of-Service as filed in Court today be kept on record.

25. From our order dated 7th August, 2009, as quoted above, wherein we have summarised the entire fact of this case, it is clear that the added respondent No.5 did not discharge his statutory duty as Revenue Officer to correct the record of rights on the basis of the decision passed by the Appellate authority in Special E. Appeal No.8 of 1978 wherein by the order dated 21st April, 1980, order of vesting dated 27th July, 1978 was set aside and quashed, passed in a proceeding being Case No. 6 of 1977-78 u/s 5A of the West Bengal Estates Acquisition Act. Ex-facie from the records it appears that the respondent No.5 who was the Revenue Officer at that material time dismissed the application for correction of record of rights by quoting the order of vesting only though it was in his knowledge that the order of vesting was set aside and quashed by the Appellate authority in Special Case E.A. Appeal as aforesaid. A clear case of mala fide and bias have been made out by the writ petitioner. In the writ application in paragraph 18 said issue raised which is to this effect "that after getting notice of contempt the Block Land & Land Reforms Officer out of bias passed an order whereby he concluded the proceeding by rejecting the petitioner"s prayer for correction, without considering the order of the Additional District judge, Alipore in Special E.A. Appeal No. 8 of 1978".

26. On factual matrix as discussed above, we are of the view that the learned Tribunal committed illegality by not exercising the power. It is true that there is a forum to consider the matter namely the Appellate authority, but from the factual matrix of this case it appears that the writ petitioner despite initiation of separate proceedings and being successful thereof, could not get the relief for correction of record of rights. The order of Revenue Officer is arbitrary in view of the fact that he relied upon the order of vesting which stood quashed and set aside long earlier in appeal and that fact was within his knowledge. By filing, the appellant pointed out those facts. The gentleman, respondent No.5, is not present before us and he is avoiding this Court though service has already been effected, we have no other alternative but to consider his action exparte. From the pleading it appears that the respondent No.5, Fazlul Rahaman Laskar, when statutorily was vested with the power to discharge his duty on the basis of the judgement of the Appellate authority, did not care to do that and relying upon the order of vesting which stood quashed, cancelled the application for correction of the record of rights. It appears from the order dated 15th December, 2003 passed by the West Bengal Land Reforms and Tenancy Tribunal in OA No. 2242/03 (LRTT) that the concerned Block Land and Land Reforms officer, Namkhana, namely, the respondent No.5 directed to consider the representation for correction of the record of rights - that means for correction of the order of vesting as recorded in the record of rights and the learned Tribunal directed the said Officer to take note of the judgement and order passed by the learned Third Court of Additional District Judge, Alipore dated 21st April, 1980 in Special E.A. Appeal No. 8 of 1978.

27. The order dated 15th December, 2003 passed by the Tribunal in the said OA reads such.

15.12.2003

Heard the ld. Advocate for the applicant and also the ld. G.R.S. Perused the averments made in the application.

The ld. Advocate for the applicant prays that the respondent No.4, the B.L. & L.R.O., Namkhana, Dist. South 24-Pgs. be directed to treat a copy of this application as representation of the applicant, consider and dispose of the same in accordance with law.

This Tribunal disposes of O.A. No.2242/03 (LRTT) by the following order :-

The respondent No.4, the B.L. & L.R.O., Namkhana, Dist. South 24-Parganas is directed to treat a copy of this application as representation of the applicant, consider and dispose of the same within three months from the date of communication of this order by passing reasoned order in accordance with law especially taking into consideration the judgement and order passed by the ld.3rd Court of the Additional District Judge, Alipore, dated 21.4.80 in special E.A. Appeal No.8/78 after affording just, fair and reasonable opportunity of oral hearing to the applicant and other interested persons.

The applicant will be at liberty to make an application for the certified copy of the reasoned order and if such an application is made then the certified copy of the reasoned order should be made available to the applicant within two weeks from the date of receipt of such application.

The applicant is directed to serve a copy of this application and a xerox copy of the order passed by this Tribunal today upon the Block Land and Land Reforms Officer, Namkhana, Dist. South 24-Parganas within two weeks from the date of obtaining certified copy of this order from this Tribunal.

In this term O.A. No.2242/03(LRTT) is disposed of.

Let a plain copy of the order duly countersigned by the Principal Officer of the Tribunal be made over to the ld. G. R. for communication to the B.L.& L.R.O., Namkhana, Dist. South 24-Parganas, for information and compliance and xerox certified copy to the applicant, if applied for, on payment of requisite Court-fee.

Sd/:

D.P. Kundu

P. Bandyopadhayay

28. Hence it appears that the respondent No.5 had the knowledge of the order of said Appellate Authority and he was directed categorically by the learned Tribunal below in earlier O.A. to consider the representation of the writ petitioner praying correction of the record of rights on the basis of the judgement delivered by the Appellate Authority in special E.A. Appeal No. 8 of 78. Despite such, the gentleman, the respondent No.5, passed the order holding that the land was vested by the order of decision based u/s 5 of the West Bengal Estates Acquisition Act, 1955 though admittedly the order in that proceeding was quashed and set aside by the learned Judge sitting as Appellate authority in that appeal as referred to.

29. The order dated 23rd February, 2007 of Revenue Officer reads such.

23.2.07

The case is put up today. The writ petitioner Sudhangsu Sekhar Pradhan is present and files haziras.

The writ petitioner produces R.C.Khatian 537 in favour of his name Sudhangsu Sekhar Prodhan of mouza Dakshin Chandra Nagar J.L. No.59/9 on total area 16.49 acres. He submits a petition dated 23.2.07 stating that the following R.S. plot with area of mouza Dakshin Chandra Nagar J.L.No.59/9 has been acquired by the Land Acquisition Office, Alipur, 24-Parganas vide L.A. Case No.II/65 of 58-59.

Mouza Dakshin Chandra Nagar

J.L. No. 59/9

R.S. Plot No.	Area
212	- 04deci out of 75deci
207	- 01deci out of 11deci
209	- 08deci out of 71deci
210	- 36deci out of 44deci
211	- 14deci out of 22deci
	Total 63deci

The writ petitioner admits that the compensation has been paid to him by Land Acquisition Officer, Alipur on 63 deci of land of mouza Dakshin Chandra Nagar J.L.No.59/9.

Examined modified kh No.435 and 435/1 corresponding to R.S.Kh. No.537 of mouza Dakshin Chandra Nagar J.L.No.59/9.

A case No.6/77-78 U/S 5A has been started under W.B.E.A. Act 1953 and has been disposed of on 27.5.78 declaring that the transfer by Birendra Pramanik and Bibhuti Pramanik in favour of Sudhangsu Pradhan within the mischief period u/s 5A of W.B.E.A. Act 1953 was not bona fide. It appears from the modified Kh No. 435 and 435/1 that the total land measuring area 16.45 acres had been brought to Kh No.I (Collectorate"s Khatian) vide memo No. C 1/1950/DH B.A 11/78 dated 30.5.78. Hence total area 16.49 acres of land of R.S. Kh No.537 corresponding to modified kh No.435 & 4351 of mouza Dakshin Chandra Nagar J.L.No.59/9 are vested to the State of West Bengal under W.B.E.A. Act 1953.

The ld. L. R.T. T. has been pleased in M.A. Case No. 1190/04 (LRTT) (O.A. No.2242/03) dated 15.2.05 directing the Revenue Officer certified copying section in the office of B.L.& L.R.O, Namkhana Dist. South 24 Parganas to furnish the applicant the certified copy for which the applicant has filed an application in connection with Misc.Case No.1/ 04 on

15.9.04 which has been registered as 1549 dated 15.9.04. Certified copy should be available to the applicant within two weeks from the date of communication of this order.

It is ordered that certified copy of this Misc.Case No. 1/2004 will be delivered at once to the writ petitioner Sudhangsu Sekhar Pradhan. Thus the solemn orders of Hon"ble L.R.T.T. h/we been complied with and the case is thus disposed of.

Sd/:

Block Land & Land

Reforms Officer,

Namkhana

South 24-Parganas

30. Considering the factual matrix of the case and the conduct of the respondent No.5, we are of the view that the original application was maintainable for quashing the order impugned, but the learned Tribunal did not do such. The order of the learned Tribunal accordingly is not sustainable and it stands quashed and set aside.

31. The order of the Revenue officer dated 23rd February, 2007, as quoted above, is also set aside and quashed.

32. The respondent No.5 while acting as the Block Land and Land Reforms Officer at the material time did not discharge his duty and did not comply with the direction of the learned Tribunal whereby he was directed to take note of the decision of the Appellate authority in special E.A. Case No.8/78, we are of the view that his said action is nothing but a mala fide and biased action. Since the respondent No.5, despite notice, has not appeared before us, we have to consider the prayer for appropriate relief.

33. Having regard to aforesaid findings and observation, present Block Land and Land Reforms Officer, the respondent No.4, is directed to correct the record of rights taking note of the order passed in special E.A. Appeal No.8 of 78 by the learned Third Additional District Judge, Alipore on 21st April, 1980 within three weeks from the date of communication of this order and a compliance report to be filed before this Court when the matter will appear in the list eight weeks hence.

34. Registry is directed to place the file before us; compliance report be filed by the present Block Land and Land Reforms Officer to the Registrar General, High Court, Calcutta.

35. The added respondent No.5 who was the Block Land and Land Reforms Officer at the material time, did not discharge his official duty, rather he acted in a mala fide and biased manner as it appears from his conduct which is ex facie proved and as the writ petitioner

suffered by initiating different legal proceeding for appropriate relief despite relief granted by the Appellate authority in special E.A. Appeal No. 8/78, we are of the view that the writ petitioner should be compensated. As the respondent No.5, despite direction of learned Tribunal aforesaid did not comply the same and did not dispose of the representation taking note of the order passed by the learned 3rd Additional District Judge, Alipore dated 21st April, 1980 passed in special E.A. Appeal No. 8/78, we are of the view that the gentleman, the respondent No.5, did not discharge his official duty and his biased action against the present writ petitioner is proved. Hence we are allowing cost of this proceeding as well as the litigation costs against the respondent No.5, the added party, Sri Rahaman, to the tune of Rs.25,000/- (Rupees Twentyfive thousand) which is to be paid to the writ petitioner within one month from the date of communication of this order, failing which the writ petitioner will take appropriate remedial measures for execution of the order.

36. Before parting with the matter, as the writ petitioner is suffering despite being successful in litigation, the District Land and Land Reforms Officer, the respondent No.2, is also directed to take appropriate steps in the matter to implement the order passed by this Court today.

37. The writ application is allowed.

38. Urgent xerox certified copy of this order, if applied for, be given.

Harish Tandon, J.

39. I agree.