

(2013) 10 CAL CK 0042

Calcutta High Court

Case No: Writ Petition No. 2475 (W) of 1999

Tapan Roy and Others

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: Oct. 8, 2013

Hon'ble Judges: Sambuddha Chakrabarti, J

Bench: Single Bench

Advocate: Jayjit Ganguly and Ms. Ankita Mukherjee, for the Appellant; Alok Kumar Ghosh, D.K. Chatterjee, Advocates for the K.M.C. and Mr. Suvabrata Datta, Advocate for the State, for the Respondent

Final Decision: Dismissed

Judgement

Sambuddha Chakrabarti, J.

By this writ petition the petitioners have inter alia prayed for a writ in the nature of Mandamus directing the respondents not to encroach upon or occupy the scheduled land in any manner whatsoever, not to change the nature and character of the land in question and for other reliefs. According to the petitioners their father was the owner of a certain plot of land which was purchased by the grand father of the petitioners. After the death of their grandfather the property was mutated in the name of their father. The grandfather made a Will by which the petitioners were given the right, title and possession of the property and their father was given the right of lifelong stay. The petitioners have alleged that in the year 1994 some private parties wanted to dispossess them from the property. Again in the year 1997 yet another attempt was made when the petitioners filed a proceeding u/s 144 of the Code of Criminal Procedure.

2. On January 5, 1999 when the petitioners reached their land they found that the respondents and their followers had surrounded the area and started demolishing the structure standing thereon. The petitioners made a representation to the local police station. They had also informed the Superintendent of Police.

3. The respondent No. 6 has filed an affidavit-in-opposition to the writ petition denying the allegations made in the writ petition. The respondent No. 6 has taken an exception that the electric bill annexed to the writ petition was a very old one issued in the name of one Sibsankar Swah showing him under the care of "Mahabir Goala". The xerox copy of the consolidated rate received is illegible. The description of the land was shown to be a vacant land. It was further alleged by the respondents that the Title Suit No. 8 of 1999 was by and between the private parties. The decree was passed ex parte. It thus appears from the writ petition and the supplementary affidavit that the PWD (Roads) had undertaken the survey of the roadside land of Raja S.C. Mullick Road including the Khatal with a view to widening and strengthening the roads. This work has already been started. The respondents denied allegations that they were trying to grab the land. In this writ petition nothing has been specifically stated whether sanction was obtained from the Corporation or not. They have repeated that the project has been undertaken by the state government and the Corporation has nothing to do.

4. The petitioners have filed an affidavit-in-reply largely reiterating their stand taken in the writ petition.

5. The petitioners have also filed a supplementary affidavit inter alia alleging that the state government was bent upon to grab the land in question. In the year 1994 an attempt was made to occupy the land forcefully. Through a letter dated November 25, 1994 the Assistant Engineer, PWD (Roads) undertook to occupy the land for certain purposes. On January 5, 1999 the structure of the land was demolished by the Kolkata Municipal Corporation as well as by the state government. The officers on duty of the state government, the ministers and the officers of the Kolkata Municipal Corporation had declared to distribute the land amongst the local youths with a view to rehabilitate the local hawkers.

6. The respondents have used an opposition against the supplementary affidavit filed by the petitioners. It has been the case of the respondents that the roads belonged to the Public Works Department (PWD, for short). The state government had undertaken a scheme relating to the widening and strengthening of Raja S.C. Mullick Road. The Kolkata Municipal Corporation has no role to play in the matter. They also denied the allegation that in January, 1999 the Corporation had demolished any structure of the petitioners and the Kolkata Municipal Corporation never played any role on behalf of the state to occupy any land of the petitioners as alleged and they have prayed for the dismissal of the writ petition.

7. The petitioners have argued that there is nothing on record to show that the respondents had taken any step to acquire the property. Therefore, the act on the part of the respondents to break into the property of the petitioners was illegal. It has been the case of the petitioners that their title has not been questioned by any of the respondents and their possession is also not in dispute.

8. The petitioners have taken a further exception to the fact that the affidavit of the Kolkata Municipal Corporation does not disclose any record pertaining to any rival claim. According to the petitioners once the Corporation has taken a point that it had no role to play in the matter it cannot stand in the way of any prayer being granted in favour of the petitioners and since the State of West Bengal prayed for a direction upon the state respondents to repair the wall or to allow the petitioners to do the repair themselves.

9. One thing appears that the petitioners have not named any specific person or persons who has or have allegedly destroyed the property of the petitioner by encroaching on their lands. In the supplementary affidavit it has been alleged that some hooligans tried to take possession with the help of the police on November 25, 1994 but who those hooligans were, i.e., neither their names nor their identities, have been mentioned in the writ petition.

10. By a letter dated November 25, 1994 the Assistant Engineer (PWD) had informed the Officer-in-Charge of the Jadavpur Police Station that the concerned department undertook survey of roadside lands of Raja S.C. Mullick Road including Khatal lands with a view to widening and strengthening the said road. The work was already in progress.

11. In reply thereto the father of the petitioner wrote a letter to the Executive Engineer, PWD (Roads), Government of West Bengal that some hooligans producing false papers tried to take possession of the land concerned with the help of police force on November 25, 1994. They have destroyed the mud shed and khatal shed. On February 16, 1995 the father of the petitioners had received a certified copy of the police report which was submitted to the court in connection with a case. From the said report he had come to learn that the Assistant Engineer, PWD (Roads) submitted a letter to the Officer-in-Charge of Jadavpur Police Station on that date. He came to learn that the Assistant Engineer had undertaken survey of the land. But actually that land belonged to the father of the petitioner. According to him he had already filed Title Suit No. 8 of 1994 before the appropriate court and had obtained an order of injunction.

12. From this letter the learned advocate for the respondents has argued that at least on the day this letter was written the title suit was pending for disposal and the petitioners had knowledge of the said letter of the PWD and the scheme undertaken by the government authority for widening and strengthening the Raja S.C. Mullick Road.

13. I find sufficient substance in the submission of the contesting respondents that the allegations made in the writ petition and in the supplementary affidavit are not the same. The allegations in the writ petition are against the functionaries of the state as well as some elected representatives of the Corporation which they, however, have shifted by way of the supplementary affidavit.

14. I also find that the allegations made by the petitioners involved disputed questions of fact. As a matter of fact it is not clear from the averments made in the petition or in the different affidavits as to who had caused damage to the petitioners' property. If such be the allegation of the petitioners that under the leadership or instigation of the respondents some private parties wanted to dispossess the petitioners the allegation is very vague and it cannot be fixed upon specific respondents.

15. The petitioners have not been able to make out why the public authorities would encroach upon the lands of the petitioner in violation of the law of the land and the apprehension does not appear to be very well founded. The reliefs prayed for should be agitated in some other forum which is competent to decide this question relating to factual disputes.

16. I find sufficient substance in the submissions of the respondents that the writ petition has been filed to get an indirect declaration that the scheduled lands belong to the petitioners. This court is not the proper forum for such declaration.

17. Therefore, I find no merit in the writ petition and the same is hereby dismissed.

18. There shall, however, be no order as to costs. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.