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2022

Ct. No. 04

Ab

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.

WPLRT 29 of 2022

Alpine Distilleries Pvt. Ltd.

Vs.

The State of West Bengal and others.

Mr. Saktinath Mukherjee,
Mr. Saptansu Basu,
Mr. Ayan Banerjee,
Mr. Sanjoy Banerjee,
Ms. Debasree Dhamali,
Ms. Riya Ghosh.

... for the petitioner.

Mr. Chandi Charan De,
Mr. A. Sarkar.

... for the State.

Leave was granted by this Court to institute the writ petition without certified copy of the order passed by the West Bengal Land Reforms and Tenancy Tribunal.

It was submitted that after filing of the tribunal application, the matter was mentioned before the concerned Bench for giving precedents to this matter in view of the extreme urgency but the Bench refused to grant such leave. Such refusal has a far reaching consequence, as the challenge was made to a notice dated 11th March 2022 issued by the Block Land and Land Reforms Officer under Section 14T(3) of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as 'said Act'), wherein an order was passed upon the petitioner to hand over the possession of the scheduled land on 14th March 2022.

Amidst the pendency of the instant writ petition,

our attention is drawn to another notice dated 14th March 2022 issued by the same authority under the same provision directing the petitioner to hand over the possession on 16th March 2022 at 12.30 p.m. Preciously for such reason, the matter was mentioned in the morning to be taken up out of turn as it is listed fairly at the bottom of the list and unlikely to be taken up before the time fixed in the said notice.

The State was given a notice. Mr. Chandi Charan De, learned Additional Government Pleader, appears and fairly submits that it is an unfortunate situation that the leave was refused by the tribunal though there appears to be urgency in the matter.

The notice was issued under Section 14T(3) of the said Act solely on the ground that the petitioner is owning and possessing excess land above the ceiling limit provided under Section 14M of the said Act. Our attention is drawn to the fact that after the acquisition of the said property by the petitioner, an application for conversion is pending before the competent authority, as the said land was always intended to be used for commercial/industrial purposes.

Mr. Saktinath Mukherjee, learned senior Advocate appearing on behalf of the petitioner, invited our attention to the provisions contained under Section 14Y of the said Act for the proposition that there is no fetter on the part of the State to permit the person to hold the land in excess of the ceiling area defined in Section 14M of the said Act, if the same is intended to be used for establishment of the industrial hub or for establishing a mill, factory and so on so forth.

Without venturing to adopt such course of action, surreptitiously a decision has been taken on *suo motu* proceeding to take possession of the excess land above the ceiling area provided under Section 14M of the said

Act.

Our attention is drawn to the several orders passed by this Court, where in an identical situation the Court has protected the interest of the petitioners by staying the notice for taking possession of the land under the provisions of Section 14T(3) of the said Act.

Our attention is drawn to the order dated 15th November 2018 passed by the Co-ordinate Bench in WPLRT 70 of 2018 (Nasiram Nandi vs. The State of West Bengal & Ors.) wherein the State respondents were restrained from interfering with the possession of the property, which had been permitted to be vested by the Block Land and Land Reforms Officer. The aforesaid order had been taken note of by a subsequent Co-ordinate Bench in WPLRT 135 of 2019 (Ram Ratan Chowdhury vs. State of West Bengal & Ors.) dated 14th November 2019, wherein it is observed that the decision taken by the Co-ordinate Bench in Nasiram Nandi (supra) appears to have occupied the field on the identical situation and there is no reason to take a different view in the following:

“The other orders of the Supreme Court relied on by Mr. Siddique, are interim orders whereby notices have been issued and operation of the final orders passed by co-ordinate Benches have been stayed. However, there is no dispute that against the last order dated 15th November, 2018 passed by another co-ordinate Bench in W.P.L.R.T. 70 of 2018 (Nasiram Nandi –vs- The State of West Bengal and Ors.), which has been placed before us, no appeal has been filed before the Supreme Court. In Nasiram Nandi (supra) it was noted and directed as follows:

“Mr. Sahoo, learned advocate appearing for the petitioner has drawn our attention to several orders passed by the Supreme Court as well as by coordinate Benches of this Court. The essence of these orders is that till such time the Supreme Court disposes of Civil Appeal No. 1416 of 1997, proceedings for vesting initiated by the relevant revenue officer may continue

and final orders of vesting may be passed but the raiyat may not be dispossessed. There is a further direction that the raiyat, while continuing in possession, shall be restrained from creating third party rights in respect of the properties which are found to be excess of the ceiling limit prescribed by the Act.

Mr. Deb Roy, learned advocate appearing for the respondents has not been able to place before us any order that takes a view contrary to what we have noticed above.

In that view of the matter, we admit the writ petition and direct stay of operation of the order under challenge.

The respondents shall remain restrained from interfering with the possession of the properties, which have been directed to be vested by the BL & LRO. At the same time, the petitioner shall remain restrained from creating any third party rights in respect thereof. This arrangement shall continue until further orders are passed on this writ petition.

Since the final decision on this writ petition has to await the decision of Civil Appeal No. 1416 of 1997, we see no reason to direct listing of the former prior to disposal of the said appeal. Accordingly, we grant liberty to the parties to mention the writ petition for hearing once Civil Appeal No. 1416 of 1997 is finally disposed of by the Supreme Court.”

There is apparently no reason to take a view different from the one taken in *Nasiram Nandi* (supra). Accordingly, we are of the considered opinion that the petitioner is entitled to interim protection as follows”

The Co-ordinate Bench passed an interim order in tune with the interim order passed in *Nasiram Nandi* (supra) in the following:

“The respondents shall remain restrained from interfering with possession of the land(s), which has/have been vested by the order of the relevant block land and land reforms officer, noticed by the tribunal. Correction in the record of rights shall not be made without obtaining the leave of the tribunal. At the same time, the petitioner shall remain restrained from creating any third party right in

respect thereof as well as from making any construction on such plot of land.”

Mr. De fairly submits that the facts of Nasiram Nandi (supra) and Ram Ratan Chowdhury (supra) are identical and, therefore, the petitioner deserves the same treatment to what the other similarly circumstanced persons were treated in the aforesaid proceedings.

We also do not find any reason for taking a different view from one, which had been taken in the aforesaid writ petition and, therefore, the petitioner is entitled to the same protection.

Accordingly, the respondents shall remain restraint from interfering with the possession of the land, which has/have been passed by an order of the relevant Block Land and Land Reforms Officer.

Furthermore, the correction of the record of rights shall not be made without obtaining the prior leave of the tribunal.

In the event, it has already been done the Block Land and Land Reforms Officer shall restore the entry as stood prior to the issuance of the aforesaid notices immediately.

Since it is alleged that the petitioner is holding the excess land beyond the ceiling limit provided under Section 14M of the said Act, the petitioner is restrained from creating any third party interest in respect of the same nor shall change the nature and character thereof without obtaining prior leave of the tribunal.

The tribunal is directed to fix a date for hearing of the said tribunal application, which shall not exceed beyond one month from the date of communication of this order and shall thereafter proceed to dispose of the same within four months therefrom after affording an opportunity of hearing to all parties and by recording

proper reasons in accordance with law.

With these observations, the writ petition is disposed of.

Since the instant writ petition is disposed of without calling for any affidavits from the respondents, the allegations contained in the writ petition shall not be deemed to have been admitted by the respondents.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)