

Calcutta High Court (Appellate Side)

Shamsher Alam Laskar & Anr vs State Of West Bengal & Ors on 3 August, 2010

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In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Mr Justice Jayanta Kumar Biswas

W.P. No. 9049(W) of 2010
Shamsher Alam Laskar & Anr.
v.
State of West Bengal & Ors.

Mr. Uttam Majumdar and Mr. Debasish Kundu, advocates, for the petitioners.
Mrs. Seba Roy and Mrs. Sriparna Ghosh Dastidar, advocates, for the State.

Heard on: 03.08.2010.

Judgement on: 03.08.2010.

The Court: - The petitioners in this art.226 petition dated April 28, 2010 are seeking the following principal reliefs:-

"a) A writ in the nature of Mandamus commanding the Respondents

to show-cause as to why the Respondent authorities particularly the Addl.District Magistrate (LR), Howrah Sadar should not be taken any steps on the basis of the representation filed by the petitioners (Annexure 'P/6' to the writ application).

b) A writ in the nature of Mandamus commanding the Respondents to show- cause as to why representation made by the petitioners for providing a Govt.Surveyor to survey the said land-in-question for determining the amount of land and boundary construction over the land-in-question in accordance with law."

The representation marked Annexure P6 is dated April 6, 2010 and a copy thereof is at p.74. By the representation the petitioners requested the ADM(LR), Howrah Sadar to demarcate the boundaries of the lands particulars whereof were incorporated in it.

The question is whether the ADM(LR) is guilty of inaction. If he is guilty of inaction, then the petitioners are entitled to an order from the High Court under art. 226 directing him to act according to law.

Mr. Kundu, counsel for the petitioners, submits that the ADM(LR) ought to have taken steps for demarcation of the boundaries of the lands in exercise of power available under s.56 of the West Bengal Land Reforms Act, 1955.

The argument, if accepted, will make the petition not maintainable before this Court, because in that case it has to be accepted that the allegation of inaction is related to a failure to exercise power under s. 56 of the West Bengal Land Reforms Act, 1955 and in such case the petitioners could not approach the High Court under art.226 treating it as the Court of first instance; their remedy, if any, would have been before the Tribunal established under the West Bengal Land Reforms and Tenancy Tribunal Act, 1997.

The argument is, however, without any merit. The provisions of s.56 of the West Bengal Land Reforms Act, 1955 only empower a Revenue Officer or any officer authorised by him to enter any land and make a survey or take measurement thereof for carrying out any of his duties under West Bengal Land Reforms Act, 1955. A Revenue Officer means any officer whom the State Government may appoint by name or by virtue of his office to discharge any of the functions of a Revenue Officer in any area.

There is nothing to show that the ADM(LR) to whom the representation was sent was a Revenue Officer within the meaning of s.2(12) of the West Bengal Land Reforms Act, 1955. Moreover, the power under s. 56 could be exercised only for carrying out any duty by the Revenue Officer under the West Bengal Land Reforms Act, 1955. Nothing in the section entitles any private person to call upon the Revenue Officer to demarcate the boundaries of his lands for his private purposes.

The Memo of the Director of Land Records & Surveys and Joint Land Reforms Commissioner, West Bengal No.7/3119/C/2005 dated October 17, 2007 addressed to the Joint Secretary, Land and Land Reforms Department, Govt. of West Bengal, relied on by Mr Kundu, has no manner of application to the case. It is evident from the Memo that it was issued for circulating instructions regarding principle "in deciding fees for deployment of Government Amins in private fields of demarcation."

The relevant contents of the Memo are quoted below:

"There are heavy pressure for demarcation of private land from different districts even by Court orders. Since no decision of the Land & Land Reforms Department has been taken on the above noted subject the following proposal (keeping in view the L & LR Department's guideline communicated vide no.51-IS dated 27.01.04) (copy enclosed) is made in partial modification of our earlier proposal and rates are communicated to the District Land & Land Reforms Officer in anticipation of his approval.

The Amins will be deployed for measurement of private land only on the order of the competent Courts, i.e., Executive or Criminal Court."

It is, therefore, evident that by the representation the petitioners called upon the ADM(LR) to do a thing which the ADM(LR) was not supposed to do under any provision of law. In other words, the petitioners did not have any right to call upon the ADM(LR) to demarcate the boundaries of the lands in question. Hence by ignoring the representation, in my opinion, the ADM(LR) did not commit any wrong. The allegation of inaction is entirely baseless and unacceptable. The petitioners are not entitled to any relief from the Writ Court.

For these reasons, the petition is dismissed. No costs. Certified xerox.

(Jayanta Kumar Biswas, J.)