

Fastners Inc. and ors. Vs. the State

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Court : Kolkata

Decided On : Jun-16-2010

Judge : Ashim Kumar Roy, J.

Acts : West Bengal Land Reforms Act, 1995 - Section 4(4), 4C, 4C(5) and 4D;
;West Bengal Land Acquisition Act, 1894 - Sections 4 and 6; ;Code of Criminal
Procedure (CrPC) - Section 482

Appeal No. : C.R.R. No. 215 of 2010

Appellant : Fastners Inc. and ors.

Respondent : The State

Advocate for Def. : Swapan Kumar Mullick, Adv.

Advocate for Pet/Ap. : Utpal Majumdar, Adv.

Judgement :

Ashim Kumar Roy, J.

1. In this criminal revision invoking Section 482 of the Code of Criminal Procedure, the petitioners who have been arraigned as accuseds in a FIR relating to offence punishable under Section 4D of the Land Reforms Act, 1995 has moved this Court for quashing of the same.

2. Mr. Utpal Majumdar, the Learned Counsel appearing on behalf of the petitioners in support of prayer for quashing urged as follows;

(a) The FIR was lodged suppressing the correct facts and without any application of mind.

(b) Before lodging of the FIR no show cause notice as contemplated in Section 4C of the Land Reforms Act was issued nor any opportunity of hearing was afforded to the petitioners.

(c) No person can be prosecuted under Section 4D without he being found to have violated Section 4C of the Act.

(d) Not only no show cause notice was issued but there was also no formation of opinion and the FIR was lodged mechanically, which is not permissible under the law and without jurisdiction.

(e) The petitioner has never changed the character of the land thus there cannot be any question of violation of Section 4C of the said Act and his prosecution under Section 4D of the West Bengal Land Reforms Act.

(f) Only allegation that have been made against the petitioners that they are making attempt to effect alteration of the area, character and mode of use of land.

(g) The FIR should not have been lodged as Land and Land Reforms Department, Land Acquisition Wing on July 15, 2009 issued notification under Section 4 of the West Bengal Land Acquisition Act, 1894 and on October 29, 2009 issued declaration under Section 6 of the said Act in respect of the self same land.

In reply to the submissions of Mr. Majumdar, Mr. Swapan Kumar Mullick for the State vehemently opposed the prayer for quashing and submitted the grounds on which the petitioners are seeking quashing of the impugned FIR are not tenable in law. Mr. Mullick produced the Case Diary and further submitted that sufficient materials have been collected by the police to show the petitioners' involvement in the commission of the alleged offences.

3. Heard the Learned Counsels appearing on behalf of the parties. Perused the materials on record, as well as the Case Diary.

4. This is a case for quashing of a First Information Report where the investigating has just commenced. The decisions as regards to the quashing of a First Information Report are still uniform. A FIR can be quashed only when it is found on the face of the allegations made therein, and accepting the same to be true no offence is made out.

5. So far as the contention of Mr. Majumdar that FIR was lodged suppressing the correct facts and without any application of mind as well as there was no change in the character of the land are disputed question of facts, which cannot be gone into at this stage by this Court, while exercising its revisional jurisdiction. Now, coming to the next question that before lodging of this FIR no show cause notice as contemplated in Section 4C of the Land Reforms Act was issued nor any opportunity of hearing was afforded to the petitioners and without formation of any opinion the FIR was lodged in a straightway, in my opinion appears to be without any force and has no merit.

Information laid before a Station House officer about the commission of any cognizable offence, merely sets the machinery of the investigation in motion, to act in accordance with the procedure established by the law. Either the decision of lodging an information to the police about the commission of any cognizable offence or when such an information discloses commission of cognizable offence, the decision of the investigating agency to register FIR and to cause investigation thereupon, does neither attract principle of natural justice nor requires a pre-decisional hearing. At this stage no accused has any right to claim for an opportunity of hearing either before lodging of FIR or before commencement of investigation. The question of affording any opportunity of hearing under Section 4C of the Land Reforms Act arises only when any raiyat holding any land apply to the Collector for change of area or of character of such land or for conversion of the same for any purpose other than the purpose for which it was settled or was being previously used or for alteration in the mode of use of such land. But when a person is found to have changed the area or character of any land or converted

the same to some purpose, other than the purpose of which it was settled or being previously used without the prior permission of the prescribed authority and thereby makes him liable for being prosecuted under Section 4D of the said Act, no prior hearing is at all necessary to lodge FIR in accordance with law.

It may be noted this is a case where no action has been taken by the prescribed authority under Sub-section (4) of Section 4 of the West Bengal Land Reforms Act. Therefore, there is no bar in institution of a prosecution under Section 4D of the said Act.

6. The last submission of Mr. Majumdar that since a notification under Section 4 of the Land Acquisition Act, 1894 has been issued, therefore the lodging of the FIR subsequently is not in accordance with law is also without any merit. The notification, if any, as aforesaid is issued for the purpose of acquisition of any land which is likely to be needed for any public purpose and same had no connection when the character or area of any land has been changed and the land have been converted to some other use other than for which it was settled or being previously used, without prior permission.

7. According to the provisions of Section 4D of the West Bengal Land Reforms Act, any change, conversion or alteration in the area, character or mode of use of any land except in accordance with the provisions of Section 4C or any violation of the order of the collector under Sub-section (5) of Section 4C is an offence which is cognizable and non-bailable and punishable with imprisonment for a term that may be extended to three years or with fine that may be extended to 50,000/- rupees or both.

8. Now, having gone through the First Information Report, it cannot be said that no offence has been made out against the present petitioners. It has been specifically alleged that the petitioners being the partners of one M/s. Fastners India in attempting to alter the area character and mode of use of land has caused change in area unauthorizedly without the permission of the competent authority in violation of Section 4C of the Land Reforms Act.

It further appears from the perusal of the Case Diary that the police during the preliminary investigating have recorded the statement of local residents and according to their statement the land in question previously was a water body and after purchasing the said land by different companies the said water body has been converted to solid land by filling up the same with earth and solid waste. Thus, in view of above, this is not a fit case for quashing of the First Information Report, accordingly such prayer stands rejected. Interim order, if any, passed in connecting therewith also stands vacated.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

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