
(2015) 12 CAL CK 0050
In the Calcutta High Court
Case No : W.P. No. 33381 (W) of 2014

ABP Pvt. Ltd. and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 16-12-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Urban Land (Ceiling and Regulation) Act, 1976 — Section 20, 26, 33, 34, 6(1)

Citation : (2015) 12 CAL CK 0050

Hon'ble Judges : Tapabrata Chakraborty, J.

Bench : Single Bench

Advocate : S. Pal, Utpal Majumdar, P. Kar and Aniruddha Sinha, for the Appellant; Pranab Kumar Dutta and Supratim Dhar, for the Respondent

Final Decision : Dismissed

Judgement

Tapabrata Chakraborty, J.—The subject matter of challenge in the instant writ application is a memorandum dated 1st December, 2014 issued by the respondent No. 3.

2. Shorn of unnecessary details, the facts are that the Ananda Bazar Patrika Private Limited Company (hereinafter referred to as ABP), being the petitioner No. 1 herein was the owner of land with buildings and structures having 19 dwelling units, drive way, pathway, compound wall, garden, tank etc. comprising of an area measuring about 12,898.49 sq. meter situated at premises No. 147 (on amalgamation of premises Nos. 147 and 246) Roy Bahadur R.N. Guha Road, Kolkata - 700 028 (hereinafter referred to as the said land). On 9th September, 1976 ABP filed a statement under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the said Act). ABP also filed an application for amendment of the statement filed under Section 6(1) on 6th January, 2010 and an application for exemption under Section 20 . In the midst thereof, ABP entered into a development agreement with the respondent No. 4 on 2nd February, 2008. On the basis of the said development agreement and for

the purpose of construction of a new building, an application was filed on behalf of ABP on 28th April, 2008 seeking a "No Objection Certificate" (hereinafter referred to as NOC) and in response thereto a field enquiry was held and by an order dated 5th March, 2009 issued by the respondent No. 2 the excess land held by ABP was quantified to be of 2988.08 sq. meter. Challenging the said order dated 5th March, 2009, ABP preferred a statutory appeal under Section 33 being Appeal Case No. 01 of 2009 and by an order dated 5th June, 2009 the appellate authority observed, inter alia, that as no formal order has been passed towards issuance of final statement under Section 9 and as the NOC has not been granted, it would be appropriate to direct the competent authority to draw up a formal proceeding and to pass appropriate order. Aggrieved by the order dated 5th March, 2009 issued by the respondent No. 2 and the order of the appellate authority dated 5th June, 2009, ABP preferred an application under Article 226 of the Constitution of India being W.P. No. 327 of 2010 and in the same initially an order was passed on 31st March, 2010 appointing a special officer with a direction upon him to survey the said property through a qualified surveyor and to submit a report. Subsequent thereto, the said writ application was disposed of by an order dated 10th May, 2010 setting aside the order dated 5th March, 2009 and directing the competent authority to dispose of the petitioners' application seeking NOC. Pursuant to the said order, the competent authority passed an order on 30th June, 2010 observing, inter alia, that the measurement of excess land will be 2889.29 sq. meter which should be vested to the State. Thereafter the petitioners approached the Principal Secretary & Appellate Authority by a representation dated 8th April, 2011 for a fresh hearing and in compliance of a direction dated 14th June, 2011 and after necessary enquiry a report was filed on 1st July, 2011 observing inter alia that the excess vacant land is of 1251.86 sq. meter. Considering the said report dated 1st July, 2011 the appellate authority passed a further order on 9th September, 2011 opining, inter alia, that with the agreement/consent of both parties, the competent authority should begin afresh from the initial report filed by the appellant under Section 6(1) , ignoring all subsequent field inspections undertaken and that a specific letter to this effect shall be given by the appellants. Aggrieved by the said order of the appellate authority dated 9th September, 2011 the petitioners herein preferred a further application under Article 226 of the Constitution of India being W.P. No. 7378 (W) of 2012 and the same was disposed of by an order dated 20th November, 2012 setting aside the order dated 9th September, 2011 and observing inter alia that such dismissal will not prevent the appellate authority from taking a decision in the Appeal Case No. 01 of 2009. As the said order was not being complied with, a contempt application was preferred and subsequent thereto the appellate authority disposed of the Appeal Case No. 01 of 2009 by an order dated 17th May, 2013 and on the basis of the direction contained in the same the competent authority furnished a report/decision after holding the enquiry on 25th August, 2014, a copy of which was supplied to the petitioners in response to an application made under the provisions of Right to Information Act, 2005. In the midst thereof, ABP

entered into an agreement for sale on 2nd April, 2012 with the respondent No. 4 and ultimately sold the said land to the said respondent through execution of a sale deed on 22nd March, 2014. Subsequent thereto, ABP was communicated a memorandum dated 1st December, 2014 issued by the respondent No. 3 observing, inter alia, that ABP has sold the property without obtaining NOC and in the appeal ABP has suppressed material facts. By the said order the statutory appeal was held to be not maintainable and the same was dismissed.

3. Mr. Pal, learned senior counsel appearing for the petitioners submits that the impugned order dated 1st December, 2014 was passed by the respondent No. 3 on the basis of a paper publication. Such newspaper reporting cannot, by the furthest of the imagination, be construed to be a primary evidence and on the basis of the same the respondent No. 3 could not have dismissed the statutory appeal.

4. Drawing the attention of this Court to the appellate authority order at page 50 of the writ application and order of the respondent No. 2 at page 57 of the writ application, Mr. Pal submits that the said authorities have literally held that no vacant land has been retained by the petitioners and that after disposal of the statutory appeal and after compliance of the directives contained in the said appeal, by the respondent No. 2, upon holding an enquiry on 25th August, 2014, the Principal Secretary to the Government of West Bengal had no jurisdiction to hold that the said appeal preferred by the petitioners was not maintainable and to dismiss the same.

5. According to him, in spite of disposal of the appeal and the issuance of necessary order by the respondent No. 2 on 26th August, 2014, the respondents sought to resurrect and reopen a proceeding which has already been disposed of and has attained finality.

6. He argues that in terms of the order dated 17th May, 2013 passed by the appellate authority, the respondent No. 2 took a decision on 25th August, 2014 and from the same it would be explicit that ABP was not holding any excess land but even thereafter NOC was illegally withheld by the respondents. The order of the respondent No. 2 dated 25th August, 2014 is inseparable from the order of the appellate authority dated 17th May, 2013 and a composite reading of the said orders would clearly reveal that ABP is not holding any excess land but no declaration to that effect was formally issued and the competent authority having thus failed to exercise the jurisdiction conferred upon it by the statute, this Court should itself declare that ABP is not holding any excess land.

7. He further argues that as ABP was not holding any excess land, the provisions of the said Act cannot be made applicable but even thereafter a formal NOC has been withheld for a period of more than seven years and such inaction is absolutely illegal and malafide.

8. In support of his arguments, Mr. Pal has placed reliance upon the following judgments:

a) Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, .

b) SATYENDRANATH MONDAL v. HINDUSTHAN PAPER CORPORATION LTD., reported in 1994 (1) CLJ 261.

c) Best and Crompton Engineering Ltd. & other v. Damodar Valley Corporation & other, reported in 1994 (1) CHN 140.

d) Harminder Singh Arora Vs. Union of India (UOI) and Others, .

e) AJITA RAY v. COMPETENT AUTHORITY, reported in 1989 (1) CLJ 9.

9. Mr. Dutta, learned senior counsel appearing for the State respondents submits that ABP itself filed a statement under Section 6(1) way back on 9th September, 1976, an application for NOC on 28th April, 2008, an application for amendment on 6th January, 2010 and also an application for exemption. Thereafter ABP participated in the enquiries held and being dissatisfied with the quantification of excess land, ABP preferred a statutory appeal and writ applications challenging the orders passed by the competent authority and the appellate authority and in the said proceedings ABP had never contended that the provisions of the said Act are not applicable to the land owned by it.

10. Drawing the attention of this Court to the provisions of Section 26 of the said Act, Mr. Dutta submits that ABP could not have transferred the said land by way of sale without giving notice in writing of the intended transfer to the competent authority. In the instant case, no such notice has been issued by ABP and the government has been deprived of its statutory preemptive right.

11. He further argues that the petitioner No. 1 had suppressed material facts. ABP had never disclosed in the earlier proceedings that it took steps to sell the land in question way back on 23rd February, 2008 by entering into a development agreement with the respondent No. 4. The facts that ABP entered into an agreement for sale with the respondent No. 4 on 2nd April, 2012 and that it ultimately executed the deed of sale on 22nd March, 2014 were also suppressed and on the ground of such suppression of material facts, the writ application is liable to be dismissed.

12. He further submits that only one statutory appeal was preferred by ABP being Appeal Case No. 01 of 2009. Drawing the attention of this Court to the contents of the order dated 20th November, 2012 passed in W.P. No. 7378 (W) of 2012, he submits that ABP misled the Court that after the Appeal Case No. 01 of 2009 a further statutory appeal was filed.

13. He further argues that the report filed by the respondent No. 2 pursuant to the order dated 7th May, 2013 passed in Appeal Case No. 01 of 2009 cannot be construed to be an order towards grant of NOC. The said order is nothing but a report and is not a final declaration towards grant of NOC and such fact stands admitted by ABP as would be explicit from the averments made in paragraph 23

of the writ application wherein it has been categorically stated that "the competent authority should have issued "No Objection Certificate" on the basis of his report and decision dated 25th August, 2014".

14. According to him, reliance placed upon a newspaper report does not malign the impugned order inasmuch as it stands admitted by the petitioners that the concerned land had in fact been sold to the respondent No. 4 by a deed of sale executed on 22nd March, 2014 and that an environmental clearance for proposed residential complex on the said land was sought for by the respondent No. 4 herein and that in reply thereto a memorandum dated 27th June, 2014 was issued by the Chief Environment Officer.

15. He further submits that on and from the month of February, 2008 all steps in respect of the said land were taken by the respondent No. 4 and the present writ application has also been affirmed by one Vikash Mimani, on the basis of a power of attorney executed by ABP in favour of the respondent No. 4 and the said Vikash Mimani. It would also be evident from the agreement for sale dated 2nd April, 2012 that the consideration amount was fixed to be of Rs. 18,00,00,000/- (Rupees eighteen crores) and the same has also been paid to ABP.

16. Placing reliance upon the rules framed under the said Act, Mr. Dutta submits that the respondent No. 3 herein is the appellate authority and he has every jurisdiction to review the earlier order passed by the appellate authority and he has rightly held that the statutory appeal itself is not maintainable in view of deliberate suppression of material facts.

17. In support of his arguments Mr. Dutta has placed reliance upon the following judgments:

- a) Union of India (UOI) and Others Vs. Ramesh Gandhi, .
- b) Vinod Kumar Vs. State of Haryana and Others, .
- c) Madhukar Sadbha Shivarkar and Others Vs. State of Maharashtra and Others .

18. Mr. Anindya Mitra, learned senior counsel appearing for the respondent No. 4 submits that a development agreement between ABP and the respondent No. 4 was executed on 23rd February, 2008 and from the relevant documents disclosed in the pleadings it is evident that ABP did not hold any excess vacant land and that the said respondent, on the basis of such records, was bona fide of the view that the provisions of the said Act are not applicable to the land sold by ABP. The said development agreement and the deed of sale have been brought on record by way of an affidavit.

19. Mr. Mitra further argues that the provisions of Section 26 of the said Act are intended only to afford first priority of purchase to the State and nothing beyond. The right to transfer of the concerned land remains intact with the holders of lands subject only to the priority of the State to purchase within a statutory time limit and that with the efflux of time such right of priority of the State stands

wiped off. In support of such argument reliance has been placed upon a judgment delivered in the case of Flavian Aloysius Pinto Vs. Special Deputy Commissioner, .

20. In reply, Mr. Pal submits that ABP was not holding any excess land. The NOC was sought for only for making construction in terms of the municipal rules and such application for NOC does not bring ABP under the purview of the said Act and that as such ABP had no obligation to issue notice in terms of Section 26 prior to transfer of the land.

21. I have heard the learned advocates appearing for the respective parties and I have considered the materials on record.

22. For proper adjudication of the matter, the following dates would be relevant:

- a) 9th September, 1976 - ABP filed a statement under Section 6(1) of the said Act;
- b) 23rd February, 2008 - Development agreement executed by ABP in favour of the respondent No. 4;
- c) 28th April, 2008 - Application made by ABP for no-objection certificate;
- d) 5th March, 2009 - Excess land of ABP quantified to be 2988.08 sq. meter;
- e) 5th June, 2009 - Order passed by appellate authority in Appeal Case No. 01 of 2009 preferred challenging the memorandum dated 5th march, 2009;
- f) 6th January, 2010 - An application preferred by ABP seeking amendment of the statement under Section 6(1) ;
- g) 10th May, 2010 - Order passed in W.P. No. 327 (W) of 2010 preferred by ABP challenging the order dated 5th March, 2009 passed by the competent authority and order dated 5th June, 2009 passed by the appellate authority;
- h) 30th June, 2010 - Order passed by the competent authority as directed by the order dated 10th May, 2010;
- i) 1st July, 2011 - Report filed in Appeal Case No. 01 of 2009 quantifying the excess land to be of 1251.86 sq. meter;
- j) 9th September, 2011 - Order passed by the appellate authority directing, inter alia, that the competent authority should begin afresh from the initial report filed by the appellate authority under Section 6(1) ;
- k) 2nd April, 2012 - Agreement for sale between ABP and respondent No. 4;
- l) 20th November, 2012 - Order passed in W.P. No. 7378 (W) of 2012 preferred by ABP challenging the appellate authority order dated 09.09.2011;
- m) 17th May, 2013 - Final order passed in Appeal Case No. 01 of 2009;
- n) 22nd March, 2014 - ABP executed sale deed in favour of the respondent No. 4.

23. From the above facts it is crystal clear that as ABP was holding vacant land in urban agglomeration in excess of the ceiling limit, it consciously filed the application under Section 6(1) and thereafter an application for amendment of the Section 6(1) statement was also filed by ABP and as such the argument of Mr. Pal to the effect that the said land of ABP does not come under the purview of the said Act is not acceptable.

24. Material facts are those facts upon which the petitioners' cause of action or the respondents' defence depends. Had the fact of execution of the agreement for sale of the said land by ABP on 2nd April, 2012 been brought to the notice of the appellate authority at the time of disposal of the appeal on 17th May, 2013, the order would have been otherwise. Admittedly, prior to conclusion of the proceeding pertaining to the return filed, ABP entered into a development agreement with the respondent No. 4 and granted power of attorney to the said respondent No. 4 and that the proceeding pertaining to the return filed by the ABP is still pending and prior to disposal of the same, ABP could not have transferred the said land to the respondent No. 4 on 22nd March, 2014. Such conduct of the petitioners cannot be said to be desirable.

25. A perusal of the order of the appellate authority dated 17th May, 2009 does not reveal that the quantification of excess land by the respondent No. 2 vide memorandum dated 1st July, 2011 has been set aside. The said appeal has been disposed of with a direction upon the respondent No. 2 to take into consideration the observations made in the said order and to take an appropriate decision as he deems fit. Pursuant thereto, the observations made by the appellate authority were considered by the respondent No. 2 and a report was filed as annexed at page 57 of the writ application. The said report does not disclose any final quantification of land and no direction towards issuance of NOC. The fact that no NOC was granted through the report dated 25th August, 2014 stands admitted by the petitioners through the averments made in the writ application. In the report dated 25th August, 2014, there has been no quantification of land and the said decision is not a final decision in respect of the petitioners' claim towards issuance of NOC and thus this Court cannot step in and declare that the petitioners are entitled to NOC and that the petitioners do not hold any excess land.

26. The judgments delivered in the case of Shri Harminder Singh Arora (supra) and in the case of Best and Crompton Engineering Ltd. (supra) are relating to arbitrariness on the part of the government in awarding contract on the basis of bid by tender. The judgment delivered in the case of K.S. Jagannathan (supra) is relating to service promotion and in the same it was decided that the High Court in exercise of jurisdiction under Article 226 can interfere and pass appropriate directions in the event the competent authority has exercised discretion conferred upon it by a statute in a mala fide manner or on irrelevant consideration. The judgment delivered in the case of Satyendranath Mondal (supra) pertains to grant of M.R. distributorship wherein the selection was

challenged on the ground of deliberate suppression of material facts. The judgment delivered in the case of Ajita Ray (supra) was delivered in the backdrop of the facts that the competent authority refused to allow the petitioners to retain land within the ceiling limit according to their choice. All the said judgments, as relied upon on behalf of the petitioners, are distinguishable on facts and the same have no manner of application in the instant case.

27. The object of the said Act of 1976 is equitable distribution of land in the urban agglomerations so as to subserve the common good. The mischief sought to be prevented by the Act is the concentration of urban land in the hands of few persons and speculation and profiteering in urban land. Thus society at large has stake in the proper implementation of the Act. If history and realities of life provide any guide it would be axiomatic to say that human ingenuity has no limits in finding out the ways of avoiding and circumventing the provisions of law much more so in cases where rights in respect of private property and profit making are sought to be regulated. Therefore the Legislature has wisely thought it fit to confer very wide powers on the appellate authority exercising powers under Section 33 of the Act and also on the Government exercising revisional powers under Section 34 of the Act and such powers under the Act are also not fettered with any limitation except the limitations which are germane to the Act and its purposes.

28. As per the scheme of the Act each and every order passed by the competent authority will come up for scrutiny either at the level of the appellate authority under Section 33 of the said Act or at the level of the government under Section 34 of the said Act. Be it noted that the appellate authority and the revisional authority are conferred with the same width of powers. The appellate authority under Section 33 gets power to decide the appeal only after the appeal is received by it. If the appellate authority does not receive an appeal, it has no power to call for the papers. In the contextual facts, question of there being any bar in the matter of invocation of power by the respondent No. 3 does not occasion.

29. For the reasons discussed above, no interference is called for and the writ application is dismissed.

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

31. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.