
(2016) 02 CAL CK 0147
In the Calcutta High Court
Case No : Writ Petition No. 21557 (W) of 2014

Apurba Das

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Citation : (2016) 3 CalHCN 270 : (2016) 6 WBLR 691

Hon'ble Judges : Sanjib Banerjee, J.

Bench : Single Bench

Advocate : Debajyoti Basu and Suvadip Bhattacharjee, Advocates, for the Petitioners; Pranab Kumar Dutta, Senior Advocate, T.M. Siddique, Advocate, for the State

Final Decision : Disposed Off

Judgement

Sanjib Banerjee, J. ? The issue involved in the six petitions is the same.

2. The petitioners cite their respective deeds of conveyance to claim the benefit under a finance department order of the State Government published in the Kolkata Gazette on March 28, 2012. The State contests the claim on the ground that the relevant notification dated March 23, 2012 does not cover ownership flat complexes not owned and developed by the State or Central Government or any authority or undertaking of the State or Central government.

3. All the petitions pertain to a residential apartment complex by the name of Sisirkunja in Madhyamgram, off the Airport. The area was once the playground of the rich, but the greens on either side of the national highway that meanders up the length of the State have now mostly been surrendered to concrete jungle. Each set of petitioners was allotted one or more apartments at the complex. The letters of allotment were issued by a company by the name of Bengal Shelter Housing Development Limited and such company is described in its letterhead as a joint sector company with the West Bengal Housing Board. The West Bengal Housing Board is constituted under the West Bengal Housing Board Act, 1972.

There is no doubt that the Board is under the control of the State government.

4. The apartment complex has apparently been completed. At any rate, these petitioners have obtained their flats therein and the relevant deeds of conveyance have been executed. The relevant deeds, which are identical in their material terms save as to the area and description of the individual flats, record the West Bengal Housing Board as the vendor, the petitioners as the purchasers and Bengal Shelter Housing Development Limited as the confirming party. The documents are otherwise unremarkable in the sense that they confer the usual rights as any vendor of immovable property would to the vendee.

5. Both the petitioners and the State have placed the deeds, particularly some of the clauses in the recital. Despite the attempt by some of the petitioners to overcook a simple dish and the attempt by the State to needlessly engage the court to assess the "real nature" of the project, what is of relevance is that not only is the Housing Board recorded as the vendor in the immediate deeds of conveyance, but such State Government authority or undertaking is also recorded as the purchaser of the property in the immediate previous deed pertaining to the land on which the complex has come up.

6. It is necessary at this stage to notice the essence of the relevant notification to ascertain the circumstances in which the same may operate. The opening clause of the notification of March 23, 2012, in its material part, provides as follows:

" ? the Governor is pleased hereby to remit stamp-duty and registration fees chargeable on the amount of difference, if any, between the market value of such property and the value set forth in the deed of transfer thereof as the State Government or Government of India or any authority under the State Government or Government of India or any undertaking of the State Government or Government of India may transfer on sale/settlement/long term lease/lease in perpetuity for a fine or premium or for money advanced in addition to rent, if any, as the case may be."

The other clauses of the notification qualify the extent of the benefit in certain cases.

7. Subject to clauses 2 and 3 of the said notification, the benefit thereunder may be obtained only if the transferor is "the State Government or Government of India or any authority under the State Government or Government of India or any undertaking of the State Government or Government of India".

Again, subject to the other provisions of such notification, the benefit thereunder will arise only if any of the entities recognised therein "transfer on sale/settlement/long term lease/lease in perpetuity for a fine or premium or for money advanced in addition to rent, if any ?" Thus, for any assessment as to whether the benefit under the said notification of March 23, 2012 can be sought or obtained by any person, such person has to be the transferee of any property

which is sold or settled or leased out on long term or perpetual basis by any among the class of transferrers recognised therein.

8. The State seeks to make out that the Housing Board is not the real owner of the land on which the relevant residential complex has come up. According to the State, the Housing Board is only the ostensible owner of the land, but the real owner is Bengal Shelter. The State insists that the circumstances in which the land came to be seemingly acquired by the Housing Board will appear from the agreement of August 2, 2005 by which an asset sale committee appointed by a Debts Recovery Tribunal sold the property to the Housing Board with Appu Estates Private Limited and Tuhin Kanti Ghosh being the confirming parties thereto. A copy of the deed of conveyance of August 2, 2005 is appended to one of the affidavits filed by the State. The State has placed extensively from the recital clauses in the said deed which traced the history of the title to the land in question.

9. The State says that the property was furnished as security by the family of Ghoshes, which owned and controlled companies by the names of Amrita Bazar Patrika Private Limited, The Jugantar Patrika Limited and Allahabad Patrika Private Limited, in connection with credit facilities obtained by such companies from a consortium of banks. The State places the relevant clauses from the recital that recount how a sale committee was formed by the DRT for the sale of the property, pursuant to which advertisements were in issued in several newspapers and bids were received.

10. It appears that Appu Estates was the second-highest bidder for the property at Rs. 9.11 crore in 2004. Upon the bid of the highest bidder not being backed by payment, Appu Estates became entitled to purchase the property on "as is where is whatever there is" basis. Clause 29 of the recital records that the board of directors of Appu Estates nominated the Housing Board to acquire the approximately 762 cottah of the land. The State refers to a development agreement of February 16, 2006 between the Housing Board as the owner of the property and Bengal Shelter as the developer.

Again, several clauses from the recital to such agreement have been placed by the State to suggest that the Housing Board was a mere name-lender but the beneficial ownership in the land vested in Appu Estates and, upon assignment by Appu Estates, in Bengal Shelter.

11. The State seeks to suggest that it is possible that the Housing Board was nominated by Appu Estates to be "shown" as the purchaser of the property to avoid the operation of the Urban Land (Ceiling and Regulation) Act, 1976. The State contends that the Housing Board may also have been projected as the owner of the land to attract persons to apply for flats in the complex on the representation that the Government or a Government agency was the promoter of the project. The State submits that on such facts as evident from the deed of conveyance of August 2, 2005 where the Housing Board is shown as the

ostensible purchaser of the land and the back-to-back development agreement of February 16, 2006, the Housing Board should not be regarded as the real vendor or transferor in the deeds executed in favour of the petitioners herein for reduced stamp duty being paid thereon under the notification of March 23, 2012.

12. The apparently candid submission on the part of the State is alarming but totally unacceptable. The State's submission regarding the use of name of the Housing Board as the purchaser of the land implies that the status of the Housing Board as an undertaking of the State was abused to illegally confer the benefit of complete exemption under the said Act of 1976 to an entity or to a transaction to which the rigours of such statute applied.

Curiously, the deed of 2005 showing the Housing Board as the purchaser of the property was executed long after the Benami Transaction (Prohibition) Act, 1988 came to be in operation. Further, it is remarkable that the State says that the name of its Housing Board was used to dupe prospective purchasers of flats at the complex on the representation that it was a Government project without it being actually so. The State pleads its helplessness in the matter since the present dispensation inherited the arrangement and did not create it.

13. It may not have been necessary to record the submission of the State since the exercise herein is only to assess whether the benefit under the notification of March 23, 2012 is available to the several sets of petitioners before the court. The astonishing submission of the State has been recorded more in anguish at the lawlessness in administrative functioning for which corrective measures have not been adopted, than for its relevance in the context.

14. Quite understandably, the Housing Board is not represented despite apparent service in several of the matters. However, the Housing Board's absence cannot detain the matters as the State is represented and, once it is evident that the Housing Board is the transferor named in the relevant deeds cited by the petitioners, the assessment as to whether the petitioners are entitled to the benefit under the notification of March 23, 2012 does not require the participation of the Housing Board herein.

15. Since it is the Housing Board which has sold the flats and the proportionate areas of land to the several sets of petitioners herein and the Housing Board is, unquestionably, an authority under the State Government or an undertaking of the State government, the benefit of payment of reduced stamp duty under the notification of March 23, 2012 has to be extended to all the petitioners without exception. It is, thus, held that each set of petitioners is entitled to claim and obtain the benefit of payment of reduced stamp duty and registration fees under the notification of March 23, 2012 in respect of the deeds of conveyance which are the subject-matters of the petitions. Most of such deeds appear to have been executed in or about September, 2013.

16. The State's refusal to confer the benefits under the notification of March 23, 2012 to the petitioners herein is arbitrary and illegal. The State and its agencies

are directed to forthwith ensure that the benefits under the relevant notification are made available to each set of petitioners in respect of the deeds of conveyance pertaining to the Sisirkunja complex in accordance with law.

17. WP 21557 (W) of 2014, WP 4151 (W) of 2015, WP 331 of 2014, WP 334 of 2014, WP 341 of 2014 and WP 342 of 2014 are allowed as above.

18. There will be no order as to costs.

19. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.