
(2013) 02 CAL CK 0008
In the Calcutta High Court
Case No : Writ Petition No. 8 (W) of 2013

Arunangshu Chakraborty

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 04-02-2013

Acts Referred:

West Bengal Town And Country (planning And Development) Act, 1979 — Section 12(3), 31, 32, 33

Citation : (2013) 2 CHN 538 : (2013) 3 WBLR 142

Hon'ble Judges : Arun Mishra, C.J.;Joymalya Bagchi, J

Bench : Division Bench

Advocate : Arunangshu Chakraborty In Person in W.P. No. 8 of 2013, Arunabha Ghosh and Anindya Lahiri in W.P. 23764 W of 2012, for the Appellant; Prabal Mukherjee for respondent No. 5 in W.P. 8 (W)/13, Suhid Sur for respdt. Nos. 9 and 10 in W.P. 23764 (W)/12, Billodwal Bhattacharjee and Srijib Chakraborty for the Bidhannagar Municipality, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, C.J.—The writ petitions have been filed by way of Public Interest Litigation wherein allotment of plot of land being BF 267, Sector-I, Salt Lake, earmarked for primary school to DOEACC society for opening of computer school has been questioned. It is submitted that action is not in conformity with the Master Plan, the Regulations and the other provisions of law. It is also submitted that illegal construction of a computer centre school will materially affect the peaceful enjoyment of the property by persons residing in the area. The conversion is illegal and void.

2. It is averred in the writ petition No. 8 (W) of 2013 that in the year 1962 work at Salt Lake City was undertaken to enable Calcutta Metropolis to expand eastwards. There is corruption in allotment of plots of land in the area in question, Certain instances of illegal allotment have been narrated in the writ petition. Salt Lake area was divided into five sectors as apparent in the Cabinet Memo dated 10.08.1977.

3. It is further averred that the plot No. BF-267 was clearly earmarked for primary school. Plot No. 141 was earmarked as Higher Secondary School and Plot No. 142 was earmarked as college. Urban Development Department by practicing fraud has converted the plot earmarked for primary school into that of regional computer centre. The plot measures 18 cottahs. The Map/Plan for its construction was drawn up in violation of the provisions of the West Bengal Town and Country (Planning and Development) Act, 1979 (hereinafter referred to as the Act of 1979"). Preparation of the Map on 03.09.2004 was illegal. It was forged and did not depict correct position as recorded in the year 1967. Under the Act of 1979 as per the provisions contained in sections 31 and 32, the land use and development control plan prepared prior to application of the said Act is deemed to be land use and development control plan under the Act of 1979. The petitioner has further submitted that primary school namely BF Block Prathamik Bidyalaya is running from AG-33/A, Kolkata. It was established in the year 1980 and was recognized under the West Bengal Board of Primary Education whereas it should run on the plot No. BF-267. The proposed building will spoil the entire residential area and destroy the environment. Hence, the petition has been preferred.

4. In addition it is averred in the writ petition No. 23764 (W) of 2012 filed by Salt Lake BF-Block Residents' Association & Anr., the details of the area kept open earmarked for roads and for greenery, parks etc and percentage of the area has been pleaded. It is submitted that building above eight stories could not have been constructed. Area in question is in residential area of Bidhannagar Municipality. From 1984, the school is running in a building at AG-33/A from 6.30 a.m. till 10.30 a.m. There are about 82 students from classes I to IV in the school. The petitioners gathered knowledge from unconfirmed sources that Plot No. BF-267 had been transferred to a Contractor/Builder/Promoter for the purpose of construction to construct high-rise building thereupon. Construction of a high-rise building beside such a narrow road would be inconvenient to the inhabitants of the area. They have filed various representations. Needful has not been done. The proposed regional I.T. school would be dealing with about 10,000 students. There is substantial departure from the Master Plan. Several other plots, which are lying vacant, could have been used for the aforesaid purpose of establishing I.T. Centre. The petitioners have changed their position to the detriment of their interest on the basis of the promise depicted by the master plan. Any change has to be made in the plan as per provisions of the Act of 1979, such procedure has not been followed. Hence the petition has been preferred.

5. In W. P. No. 23764 (W) of 2012, affidavit-in-opposition has been filed by the respondent Nos. 9 and 10. The respondent No. 9 is the respondent No. 5 in the other writ petition No. 8 (W) of 2013. It is contended in the affidavit that the National Institute of Electronics and Information Technology (NIELIT) is implementing a joint scheme of All India Council for Technical Education and Department of Information Technology, Government of India. The objective of

the Scheme is to develop quality manpower in IT by utilizing the expertise available with the computer training institutes who are granted accreditation for conducting specified levels of courses, subject to their meeting well defined norms and criteria. The objectives are to generate quality manpower and develop skilled professionals in the area of Information, Electronics and Communications Technology and allied areas, by providing world-class education and training and accreditation services to provide continuing support to learners and trainers through active design and development of innovative curricula and acquisition to continue to implement the DOEACC Scheme for computer courses, jointly developed by AICTE and DIT in the non-formal sector of IT Education and training. The answering respondent has been created by the Department of Electronic and Tele Communication, Government of India. The Society will be non-profitting society. As per Rules of the High Court with respect to Public Interest Litigation petition cannot be said to be maintainable. The important project has been undertaken by the Government of India as also the State of West Bengal for constructing IT/ITES building of National Institute Electronics and Information Technology.

6. It is further contended in the counter affidavit that the objects of the project are manifold, viz. Enhancing the production of skilled manpower in the area of IECT and allied areas for making available industry ready professional, to promote e-Learning, to help growth of the Digital Entertainment Industry, to provide Information Security service and training as per the need of the region, to assist West Bengal and other State Governments in the region in implementing their e-Governance activities and staff training and further to implement real life project exposure to the Centre's student of long-term courses. There is no question of causing any nuisance to the residents of the area. The estimated costs of construction of the building is Rupees Six Crore Twenty Two Lakh and Six Thousand. It has been approved by the Government of India, Ministry of Communication and Information Technology, Department of Information Technology vide letter dated February 10, 2009. Noble cause is being undertaken by the respondent No. 9. The Department of Information Technology (DIT) had sanctioned grant of Rs. 373.24 lakh. The State of West Bengal had also sanctioned Rs. 98,93,400/- vide its letter dated March 18, 2009. The Government of West Bengal has also waived Rs. 73.452 lakhs as Permission Fee for transfer of lease hold right of the plot of land in favour of the respondent No. 9. The provisional No Objection Certificate has been issued by the West Bengal Fire and Emergency Service as also by the Airport Authority of India. In this regard, documents have been collectively filed as Annexure "C" to the affidavit. It is further contended that job of constructing B+G+13 stories IT/ITES building of the National Institute of Electronics and Information Technology has been entrusted upon Central Public Works Department and to that effect Memorandum of Understanding has been executed on February 1, 2012 and the respondent No. 9 had already paid a sum of Rupees Two Crore Twenty Nine Lakh Ninety Nine Thousand in favour of Superintending Engineer, C.P. W. D. as an

advance deposit. Further amount of Rupees forty lakh is to be paid towards construction of Phase I of the proposed building. In addition, a sum of Rs. 14,93,669/- has been spent for obtaining sanction of the building plan from Bidhannagar Municipality and foundation work of the proposed construction is on the verge of completion. Prayer has been made to dismiss the writ petition.

7. Mr. Ghosh, learned Senior Counsel with Mr. Lahiri and Mr. Arunangshu Chakraborty, appearing in person, have submitted that there is violation of the Master Plan/Working Plan sanctioned by the State of West Bengal in the year 1967. The plot in question had been reserved for the purpose of primary school building. It could not have been allotted for establishment of Computer School/Centre. It is not permissible to change the use of the land in the manner it has been done without modification of the Working Plan/Master Plan and without following the Provisions contained in the Act of 1979. It was also submitted that the respondents are bound by the doctrine of promissory estoppel in respect of the area in question. When they had purchased the plots it was shown that primary school building would be constructed at the site in question. There is material change, which would affect comfort of the inhabitants of the locality as well as adversely affect the environment of the area. Burden of ten thousand students was not contemplated in the Master Plan at the plot in question that is going to create nuisance to the inhabitants residing nearby. They have relied upon the decisions of *Machavarapu Srinivasa Rao and Another Vs. The Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority and Others*, *Dipak Kumar Mukherjee Vs. Kolkata Municipal Corporation and Others*, *Manohar Joshi & Ors. vs. State of Maharashtra & Ors.* reported in (2012) 3 SCC 619 *R.K. Mittal and Others Vs. State of Uttar Pradesh and Others*, *Humanity and Another Vs. State of West Bengal and Others*, and *CA Block Citizens Association and Others Vs. State of West Bengal and Others*,

8. Mr. Mukherjee, learned counsel appearing on behalf of the respondent Nos. 9 and 10 has submitted that there is no violation of the Master Plan/Working Plan. The plot in question was reserved in 1967 for purpose of education. Computer learning is also a part of education programme. Thus, it cannot be said that the Working Plan/Master Plan has been violated. It is also submitted that the Master Plan is not on record and no modification of the Working Plan is necessary. As a matter of fact allotment of the plot was made on March 23, 2001 for the purpose of establishing computer centre and after creation of the respondent No. 9, a successor society in fact is formed by the Government of India, Department of Information and Technology. Thus, there is no violation of building rules. There is no question of any nuisance being caused in the area in question. The project is necessary for achieving the purposes in the field of computer and technology of IT/ITES. The action cannot be said to be against public interest. No favour has been meted out to the respondents. It is in furtherance of the scheme of the Government of India in DIT/AICTE. It is in order to promote e-Learning and to enable the Digital Entertainment Industry and to provide Information Security service and training as per the need of the region to assist West Bengal and

other State Governments in the region in implementing their e-Governance activities and staff training. Thus no public interest is going to be served by entertaining the writ petition.

9. First question, arises for consideration, is whether there is any substantial change from the master plan as sanctioned. However, even if it is a working plan same is enforceable and the area in question was reserved for educational purpose, i.e. for the purpose of establishing primary school, is not in dispute. However, we find that ITES building is to be used for computer school/centre to enhance the production of skilled manpower in the area of IECT, allied areas, for making available industry ready professional, to promote e-Learning to help growth of the Digital Entertainment Industry, to provide information Security service and training as per the need of the region.

10. As per objectives detailed in the return, we find that no violation much less substantial one of the working plan has been made and the educational purpose remains the same which was essence of working plan. Thus there cannot be said to be any substantial departure from the working plan. Purpose remains educational one and in fact such purpose has not been violated. The Master Plan was sanctioned and then Working Plan was prepared back in the year 1967. Thus the purpose for which plot has been allotted it cannot be said to be so as to cater any interest of private individual but is in the public interest.

11. It is not the case of the petitioners that any particular building rule has been violated while granting permission to raise construction. Requisite sanctions permissions have been obtained. Government of India has sanctioned huge amount as well as the State of West Bengal. Work on project has already been initiated and the work upto plinth level has already been completed. Huge amount has been sanctioned which is required to be spent for construction of the aforesaid building. Mere fact that high-rise buildings is being constructed, we are not inclined to interfere particularly when in Salt Lake area large number of high-rise buildings are already in existence. Particularly when no violation of any of the provisions of the building rules has been pointed out, we are not inclined to make any interference on the ground that high-rise building will cause inconvenience to the inhabitants in the area in question. Such a ground is imaginary and three storied parking area is being provided so that there will also not be any obstruction due to parking of vehicles.

12. The project is of national importance and is necessary for the development of the region and State of West Bengal. It need not be interdicted on the grounds urged. No doubt about it as provided in section 33 of the Act of 1979, the Land Use and Development Control Plan prepared prior to the application of the ACT of 1979 is deemed to be Land use and Development Control Plan. But we find that there is no substantial violation or departure from working plan-educational purpose remains the same and the project in question cannot be said to be impermissible. In the facts and circumstances, we are not inclined to make any interference in project of larger public interest.

13. It was submitted on behalf of the petitioners that the respondents are bound by the principle of promissory estoppel. However, at the same time it is contended by them that plan could have been modified in accordance with law. Thus we find once there is no assurance the plan will remain the same as it has substantially remained unchanged, in our opinion, by allotment having been made for the aforesaid purpose, there is no substantial departure from original plan and there is no question of applicability of principle of promissory estoppel. With the passage of time, different kind of education have become necessary and computer education is necessary and helps in various kinds of education including the one at primary level. As such the effort made so as to advance such education purpose cannot be said to be inconsistent with purpose for which it was reserved. The Court cannot adopt pedantic view of the matter and the purposive interpretation has to be made of the working plan prepared in the year 1967. We find there is no substantial departure and there is no question of applicability of the principle of promissory estoppel.

14. Reliance was placed on the decision of the Hon''ble Apex Court in the case of Manohar Joshi vs. State of Maharashtra & Ors. reported in (2012) 3 SCC 619 where in space was reserved for the purpose of primary school. It was shifted to another location and shifting of area reserved for a public amenity like primary school was done in blatantly illegal manner to favour kin of Chief Minister upon express directions of the concerned Chief Minister. Not only the action was quashed in view of change of use but change of use was also held to be impermissible. Reliance has been placed on paragraphs 217 and 221 of the said decision in which it has been observed:

217. The illegal development carried out by the developer has resulted into a legitimate primary school not coming up on the disputed plot of land. Thousands of children would have attended the school on this plot during the last 15 years. The loss suffered by the children and the cause of education is difficult to assess in terms of money, and in a way could be considered to be far more than the cost of construction of this building. Removal of this building is however not going to be very easy. It will cause serious nuisance the occupants of the adjoining buildings due to noise and air pollution. The citizens may as well initiate actions against PMC for appropriate reliefs. It is also possible that the developer may not be able to remove the disputed building within a specified time, in which case PMC will have to incur the expenditure on removal. It will, therefore, be open to the developer to redeem himself by offering the entire building to PMC for being used as a primary school or for the earmarked purpose, free of cost. If he is so inclined, he may inform PMC that he is giving up his claim on this building also in favour of PMC.

221. The spaces for public amenities such as roads, playgrounds, markets, water supply and sewerage facilities, hospitals and particularly educational institutions are essential for a decent urban life. The planning process therefore assumes significance in this behalf. The parcels of land reserved for public amenities under

the urban plans cannot be permitted to be tinkered with. The greed for making more money is leading to all sorts of construction for housing in prime city areas usurping the lands meant for public amenities wherever possible and in utter disregard for the quality of life. Large number of areas in big cities have already become concrete jungles bereft of adequate public amenities. It is therefore that we have laid down the guidelines in this behalf which flow from the scheme of the MRTTP Act itself so that this menace of grabbing public spaces for private ends stops completely. We are also clear that any unauthorised construction particularly on the lands meant for public amenities must be removed forthwith. We expect the guidelines laid down in this behalf to be followed scrupulously.

15. It is apparent even from the aforesaid dictum that action in question cannot be said to be violative of principle laid down by the Hon'ble Apex Court. Rather in instant case nature of public amenities has not been changed. It has been made of wider use and that too of the national importance by the agency of the Government of India and non-profit organization. Thus, principles laid down by the Hon'ble Apex Court are not at all violated rather counters submission raised by the petitioners.

16. Reliance has also been placed on the decision in the case of R.K. Mittal and Others Vs. State of Uttar Pradesh and Others, in which with respect to the Master Plan it has been emphasized that when Master plan specified the user as residential and therefore these plots cannot be used for any other purpose. The plans have a binding effect in law. In R.K. Mittal, the Apex Court held:

68. The Master Plan and the zonal plan specify the user as residential and therefore these plots cannot be used for any other purpose. The plans have a binding effect in law. If the scheme/master plan is being nullified by arbitrary acts and in excess and derogation of the power of the Development Authority under law, the Court will intervene and would direct such authorities to take appropriate action and wherever necessary even quash the orders of the public authorities.

70. At this stage, we may also refer to the judgment of this Court in Virender Gaur and Others Vs. State of Haryana and Others, wherein this Court was concerned with the issue whether Dharmashala should be permitted to be constructed upon the land which was reserved as open space under the plan. This Court, while noticing the impact on environment, right to hygienic environment and protection of the residents, observed as under:

11. It is seen that the open lands, vested in the municipality, were meant for the public amenity to the residents of the locality to maintain ecology, sanitation, recreation, playground and ventilation purposes. The buildings directed to be constructed necessarily affect the health and the environment adversely, sanitation and other effects on the residents in the locality. Therefore, the order passed by the Government and the action taken pursuant thereto by the municipality would clearly defeat the purpose of the scheme. Shri D.V. Sehgal,

learned Senior Counsel, again contended that two decades have passed by and that, therefore, the municipality is entitled to use the land for any purpose. We are unable to accept the self-destructive argument to put a premium on inaction. The land having been taken from the citizens for a public purpose, the municipality is required to use the land for the protection or preservation of hygienic conditions of the local residents in particular and the people in general and not for any other purpose. Equally acceptance of the argument of Shri V.C. Mahajan encourages pre-emptive action and conduct, deliberately chartered out to frustrate the proceedings and to make the result fait accompli. We are unable to accept the argument of fait accompli on the touchstone of prospective operation of our order.

17. We find that the area in question was for the purpose of school, i.e. educational purpose and the same has not been changed. There is no substantial change in this case in the Master Plan/Working Plan. Thus ratio of the decision is of no help to the petitioners to espouse the case which they have canvassed.

18. Reliance has also been placed on the decision of the Hon''ble Apex Court in the case of *Humanity and Another Vs. State of West Bengal and Others*, in which the area which was reserved for the purpose of college was given for the purpose of primary school. Within a month of the application made by the allottee, the very allotment was quashed as it was made in a hot haste as well as it was observed that it was for the purpose of college and it could not have been given for the purpose of primary school. Thus the ratio has no application. The incumbent who was appointed was well-known sport person but was not an educationist. Thus the allotment to such a person is quashed as observed by the Hon''ble Apex Court in paragraph 51 of the said judgment:

51. In the instant case, the allottee may be a well-known sportsman but does not claim any expertise as an educationist. Here within a month of the application made by the allottee, the allotment was made in a hot haste and without disclosure by the State of any detailed consideration. Thus, the present case stand poles apart from the facts in *Sachidanand Pandey*.

19. Reliance has also been placed on the decision in the case of *Machavarapu Srinivasa Rao and Another Vs. The Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority and Others*, in which the Apex Court considered change in land use. Permission was granted to construct temple on the land earmarked for park in the Development Plan without modifying the Development Plan. The manner the development authority had permitted the change was held to be unsustainable. The Apex Court has observed thus:

20. An analysis of the above noted provisions shows that once the master plan or the zonal development plan is approved by the State Government, no one including the State Government/Development Authority can use land for any purpose other than the one specified therein. There is no provision in the Act under which the Development Authority can sanction construction of a building,

etc. or use of land for a purpose other than the one specified in the master plan/ zonal development plan. The power vested in the Development Authority to make modification in the development plan is also not unlimited. It cannot make important alterations in the character of the plan. Such modification can be made only by the State Government and that too after following the procedure prescribed u/s 12(3).

20. There is no dispute with the aforesaid proposition laid down by the Hon''ble Supreme Court. However, since in the facts of the instant case we find that there is no substantial departure made from the Master Plan/Working Plan. No modification of Working plan/Master plan was required in the facts of the instant case. As such, no substance can be derived from the aforesaid decision.

21. Lastly, reliance has also been placed on the decision in the case of Dipak Kumar Mukherjee vs. Kolkata Municipal Corporation and others reported in 2012 STPL(Web) 568 SC, in which there was violation of the building rules. In the instant case violation of any particular building rule has not been even pleaded nor it could be made out at the time of argument. No specific rule has been pointed out by the petitioners even during arguments that may have been violated. The requisite sanctions and permissions have been obtained. Project has been sponsored by the Government of India as well as the State of West Bengal and is in larger public interest. We find the petitions do not cater to the public interest but intend to defeat it.

22. Thus, we find no ground to interfere in the writ petitions and they deserve dismissal. Resultantly, the petitions being devoid of merits are hereby dismissed. The parties to bear their own costs as incurred.

J. Bagchi, J.

I agree.