

(2018) 12 CAL CK 0025
In the Calcutta High Court
Case No : Writ Petition No. (L.R.T) 99 Of 2018

Ascon Infrastructure (India) Limited	Vs	APPELLANT
State Of West Bengal And Ors		RESPONDENT

Date of Decision : 06-12-2018

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 4B, 4C, 4D, 4(4), 4(4)(a)

Citation : (2018) 12 CAL CK 0025

Hon'ble Judges : Dipankar Datta, J; Bibek Chaudhuri, J

Bench : Division Bench

Advocate : Mrinal Kanti Das, Subhabrata Das, Soumitra Bandopadhyay,
Subhasis Bandopadhyay

Final Decision : Disposed Off

Judgement

This writ petition registers a challenge to an order dated 23rd August, 2018 passed by the West Bengal Land Reforms and Tenancy Tribunal (hereafter the tribunal). By the said order, the tribunal proceeded to dismiss O.A. 3116 of 2017 (L.R.T.T.) along with M.A. 841 of 2017 filed by the petitioners.

M.A. 841 of 2017 was an application for condonation of delay in presentation of the original application. While considering such application, the tribunal looked into the merit of the original application. The tribunal on its reading of paragraph 166 of the West Bengal Land and Land Reforms Manual, 1991 (hereafter the manual) formed a view that if any conversion of land had taken place after 24th March, 1986, a prayer for post-facto approval of such conversion cannot be granted by the collector. It is based on such reasoning that the original application failed.

Mr. Das, learned senior advocate appearing for the petitioners has referred to us the provisions contained in Section 4-C of the West Bengal Land Reforms Act, 1955 (hereafter the Act) as well as paragraph 166 of the manual. According to him, an application for conversion of land could be made by a raiyat if the

subject land, inter alia, was being used for any purpose other than the purpose for which it was settled or was being previously used (emphasis laid by him) or for alteration in the mode or use of such land. He has further drawn our attention to the documents annexed to the original application to show that as far back as in 1974, there was a cinema hall constructed on the subject land and that conversion of use of the subject land had taken place at or prior to the time such cinema hall was constructed. It is his specific contention that the petitioners having purchased the subject land in 2015, intended to raise construction thereon after obtaining permission as required under Section 4-C of the Act and it was, therefore, not a case where the conversion of use had taken place after 24th March, 1986, for which the statute does not empower the collector to grant post-facto approval. Since the conversion was an incident that had taken place much prior to 24th March, 1986, it was also contended that the tribunal was in gross error in holding that the conversion had taken place in 2015 whereafter the petitioners had applied for post-facto approval of conversion.

Mr. Bandopadhyay, learned Junior Government Advocate representing the State, contends that the tribunal was right in dismissing the original application on its reading of Section 4-C of the Act and paragraph 166 of the manual and also that no case for interference has been set up.

Having heard learned advocates for the parties and on consideration of the statutory provisions that have been cited on behalf of the petitioners, we have no hesitation to hold that the tribunal was in error in dismissing the original application on the first day without calling for affidavits from the parties.

Paragraph 166 of the manual ordains as follows:

"166. Where conversion has been made before making application for permission -

(i) While disposing of a petition for conversion, it may come to the notice of the Collector that the land has been already converted to some use other than that appearing from the record-of-rights. Such a case should normally be dealt with under Section 4(4). In such cases, it should be enquired as to whether the change in use has been made in the usual course of nature or by deliberate action on the part of the applicant or any other person; and, in the latter case, it should also be ascertained whether the change took place before 24.3.1986, i.e. the date of publication in the official Gazette of the West Bengal Land Reforms (Amendment) Act, 1981.

(ii) If the change in the use of land has occurred (a) in the usual course of nature, or (b) has occurred at a time when such change was not unlawful, (vide proviso to section 4B), or (c) has occurred due to developmental activities of the Government or of a local body in the surrounding area, or (d) due to urbanisation in the surrounding area, the applicant should be informed that the change is being noted in the record-of-rights, and the said record should be corrected accordingly in due course. If there was a reasonable cause made

behind the change that occurred, the Collector may consider on the merit of the case if post facto permission should be granted. [In this connection the expression 'without any reasonable cause' in section 4(4)(a) may be referred to.] On the other hand, if it is proved that the change was deliberately made without reasonable cause after 24.3.1986, the land may be vested under section 4(4)(a) or penal action may be taken under section 4D unless prosecution under section 4D is barred by limitation under the Code of Criminal Procedure.

(iii) It is apprehended that there may be many cases of unauthorised change in land-use where no application for permission to make such change has even been made. Revenue Inspectors shall make enquiries regarding such unauthorised conversion during their tour in their areas. If any such case comes to notice, penal action as contemplated in sub-section (4) of section 4 of section 4D should be taken, unless the Collector grants post facto permission as mentioned in sub-rule (i) above.

(iv) While deciding a matter as mentioned in sub-rules (I), (ii) and (iii) above, the emphasis should be on the bona fides or absence of bona fides of the person making change in land-use.

(underlining by us for emphasis)

Although it is the admitted case of the petitioners that they had purchased the subject land in 2015 and intended to develop the same, there were sufficient pleadings in the original application to the effect that the subject land, though classified as 'shali', was being used for purposes other than agriculture and in fact there was a cinema hall constructed thereon. On the face of such pleadings, the minimum that was expected of the tribunal was to ascertain whether the conversion was a post or pre 24th March, 1986 development. This could have been ascertained by extending an opportunity to the respondents in the original application to controvert the pleadings in the original application. The original application, in our view, could not have been dismissed only on the ground of purchase of the subject land by the petitioners in 2015, without considering the effect of the pleadings in the original application, referred to above.

We, therefore, set aside the order of the tribunal. This would result in revival of the original application. Since we find that the original application was delayed by 13 days, we condone the delay in its filing.

To ensure expeditious hearing of the original application, we grant time to the respondents therein to file their reply affidavit within eight weeks; rejoinder thereto, if any, may be filed by the petitioners within two weeks thereafter. After the affidavits are exchanged or the time to file affidavits expires, whichever is earlier, the petitioners shall have the liberty to request the tribunal to fix an early date of hearing of the original application. We are sure that the tribunal, subject to its convenience, shall proceed in that direction and dispose of the original application as early as possible maintaining the seriality of the original applications that are pending before it for final hearing.

The writ petition stands allowed to the aforesaid extent, without any order as to costs.