
(2007) 11 CAL CK 0022
In the Calcutta High Court
Case No : FMA No. 519 of 2003

Bangur Land Development Corporation Ltd.	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision : 30-11-2007

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10(3), 4(1)

Citation : (2008) 1 CHN 618

Hon'ble Judges : Tapas Kumar Giri, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Kashi Kanta Moitra and S.N. Dutta, for the Appellant; Sridhar Panja, for the Respondent

Judgement

Ashim Kumar Banerjee, J.—The appellant was a company incorporated under the provisions of the Indian Companies Act, 1913. It was dealing with business of land development. In 1976 the Urban Land (Ceiling and Regulation) Act came in force and under the provisions of the said Act of 1976 the owner was to submit return of the excess land beyond the ceiling limit fixed under the said Act of 1976. Accordingly, the appellant submitted return. They also prayed for retention of surplus land in accordance with the provisions of the said Act of 1976. The authority under the said Act of 1976 rejected the application of the appellant and passed an order of vesting in respect of the excess land. The order of the competent authority rejecting the application of the appellant became the subject-matter of the writ proceeding. In the writ proceeding the appellant challenged the order of rejection, as according to them, they were entitled to an order of retention as prayed for in their application made before the authority.

2. During the pendency of the proceeding out of thirty-five bighas nine chittacks fourteen square feet land involved herein, twenty-two bighas eight cottahs of land was acquired by the State for the purpose of constructing housing complex for Calcutta Metropolitan Development as also for the purpose of constructing Link Road by widening Prince Anwar Shah Road. The balance thirteen bighas of

land was under occupation of various refugee families displaced from East Pakistan. The acquisition proceedings were also under challenge in separate writ proceedings initiated by the appellant. The appellant was not successful in resisting the acquisition. The Court however, directed adequate compensation to be paid to them. Accordingly, the appellant received compensation for twenty-one bighas eight cottahs of land and for the rest acquired land litigation is pending in this Court with regard to compensation. For the other part of the land admittedly, the appellant was out of possession for a long time.

3. Considering the aforesaid facts and circumstances it is clear that the appellant was not in a position to hand over back thirty-five bighas nine chittacks fourteen sq.ft. land covered by the order of vesting passed by the competent authority under the said Act of 1976.

4. The writ petition came up for hearing before the learned Single Judge. At that stage the appellant prayed for leave to file supplementary affidavit by incorporating the subsequent events. The learned Judge gave such leave. The matter ultimately appeared for hearing before another learned Single Judge. His Lordship after hearing both the parties came to a conclusion that such subsequent events should have been brought to the notice of the Court much earlier. Some of the acquisition proceedings were already pending when the writ petition was filed. Hence, the appellant was guilty of suppression of fact and they should not be allowed to bring such factual scenario by way of supplementary affidavit. The learned Single Judge ultimately dismissed the writ petition after holding that same was not maintainable and no relief could be granted in absence of respondent Nos. 1, 2 and 4 against whom rule was discharged earlier.

5. Being aggrieved by, and dissatisfied with, the judgment and order of the learned Single Judge dated September 12, 2002, the appellant preferred the instant appeal.

6. Mr. Kashi Kanta Moitra, learned senior Counsel appearing in support of the appeal has handed over a chart giving details of the acquisition proceedings along with relevant orders passed from time to time in the acquisition proceedings. Upon perusal of the order dated March 19, 1999 passed by the Collector in terms of the direction of this Court, it appears that the Collector observed, "I am satisfied that compensation money is payable for acquisition of those plots in question under Act II of 1948 pursuant to the notice u/s 4(1)(a), Act II already published in the Calcutta Gazette." Such observation was made by the Collector after recording the fact that although those plots were subject-matter of the land ceiling proceeding, those were cleared by the State as specifically recorded by the Collector in the said order.

7. Mr. Moitra contends that once those plots were acquired by the State and compensation was paid for almost the entire land under acquisition, it was not possible for the appellant to comply with the direction of the competent authority to hand over back the said land in question. The learned Single Judge erred in

not appreciating such fact.

8. On the issue of refugee land Mr. Moitra contends that the appellant lost all control over the said plot of land long before within the knowledge of the State. Hence, it was well nigh impossible for the appellant to hand over the said plot of land in terms of the vesting order. Mr. Moitra in his usual fairness concedes that the relief prayed for in the writ petition may not be relevant as of date in view of changed circumstance and on instruction he does not press the same.

9. The instant appeal appeared before us on several occasions when we could not take up the hearing in absence of the State lawyer. Despite attempts being made we could not ensure presence of any State Advocate. Hence, we directed Mr. Sridhar Panja who appeared before the learned Single Judge to assist us on behalf of the State. Accordingly, Mr. Panja appeared and has made submissions.

10. Mr. Panja contends that once the vesting order was passed, the appellant lost all right title and interest over the land in question. Hence, no relief could be granted to the appellant. Mr. Panja also contends that with regard to compensation there are separate proceedings and the appellant is not entitled to claim any relief on that score. Mr. Panja has relied upon the vesting order so published in the Calcutta Gazette on July 26, 1982. He has also relied upon the order dated October 11, 1982 to show that the subject land was declared as vested u/s 10(3) of the said Act of 1976.

11. In support of his contentions Mr. Panja has relied upon the Apex Court decision in the case of State of West Bengal and Others Vs. Sri Pronab Kr. Sur and Others, . Mr. Panja has relied upon paragraphs 10 and 11 of the said decision wherein it was held that unless and until the State issues necessary notification for repeal, the said Act of 1976 is still valid law, even after passing of the Urban Land (Ceiling and Regulation) Repealed Act 1999.

12. The appellant admittedly was the owner of the entire plot of land measuring thirty-five bighas nine chittacks fourteen sq.ft. on the day when the return was submitted by the appellant to the competent authority. The State Government started acquiring the land in phases as appears from the chart handed over in Court by Mr. Moitra. The appellant lost twenty-two bighas eight cottahs of land under acquisition. They tried to resist acquisition, but they were unsuccessful. This Court directed payment of compensation. Ultimately, they got compensation for twenty-one bighas eight cottahs and for the rest one bigha litigation is pending in this Court with regard to compensation. The Collector in his order dated March 19, 1999 clearly observed that the said land got cleared by the State from the competent authority. Hence, there was no impediment in awarding compensation to the appellant. The vested land cannot be acquired by the State. If the said land stood vested, the appellant was not entitled to compensation. Once it was cleared from the Urban Land Ceiling Authority, the order u/s 10 of the said Act of 1976 stood modified and to that extent the writ petition was infructuous. However, this fact was not properly brought to the notice of this

Court as the learned Judge did not allow subsequent facts to be brought by way of supplementary affidavit. Had it been taken note of, His Lordship would have come to a conclusion that the writ petition was infructuous in respect of twenty-two bighas eight cottahs of land so as the order of vesting. Hence, we are of the view that the order of vesting is no more in force in respect of twenty-two bighas eight cottahs of land as indicated above.

13. Let us come to the refugee land. Admittedly, on the day of passing of the order u/s 10 the legal ownership was with the appellant. However, they lost control and possession of the said land because of possession being taken by refugee/squatter. It is for the State to take a decision in respect of the balance thirteen bighas of land which is now under the possession of the refugee/squatter. Mr. Moitra on instruction does not press his claim with regard to the said part of the land. It is however, made clear that the competent authority must not insist upon handing over of physical possession of the said thirteen bighas of land by the appellant to the State.

14. The order of the learned Single Judge is modified. The appeal is disposed of accordingly without any order as to costs. The bunch of copies of the documents so handed over by Mr. Moitra be kept on record. Urgent xerox certified copy of this order, if applied for, may be given to the parties on priority basis.

Tapas Kumar Giri, J.

I agree.