

(2022) 07 CAL CK 0002
In the Calcutta High Court
Case No : WPA No. 2339 Of 2022

Godrej Properties Ltd. & Anr

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 05-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 226, 227
Sick Industrial Companies (Special Provision) Act, 1985 — Section 15(1), 18(4)
West Bengal Land Reforms Act, 1955 — Section 14T(3), 14T(3A)
West Bengal Land Reforms And Tenancy Tribunal Act, 1997 — Section 2(r), 8

Citation : (2022) 07 CAL CK 0002

Hon'ble Judges : Suvra Ghosh, J

Bench : Single Bench

Advocate : Saktinath Mukherjee, Aniruddha Chatterjee, Siddhartha Banerjee, S. Ojha, S. B. Chatterjee, S. N. Ghosh, Soumyajit Bhatta, Chandi Charan De, Anirban Sarkar

Final Decision : Disposed Of

Judgement

Suvra Ghosh, J

1. By an order passed by the Mumbai bench of the Hon'ble National Company Law Tribunal in Transferred Companies Scheme Petition No. 23 of 2017, Happy Highrises Limited merged and stood amalgamated with the petitioner Company which stepped into the shoes of the earlier Company. National Textile Corporation Limited having become sick towards 1992-1993, reference was made under section 15(1) of the Sick Industrial Companies (Special Provision) Act, 1985 (in short SICA) before the Board for Industrial and Financial Reconstruction (in short BIFR) and after much deliberation, the BIFR sanctioned the scheme under section 18(4) of the SICA, 1985 and issued directions for sale of the land in question by an order dated 4th April, 2002. By a letter issued on 19th October, 2004, the Government of West Bengal granted permission for disposal of surplus land held by the sick industrial Company and for conversion of the land to any character on an assurance that the Urban Land (Ceiling and Regulation) Act,

1976 shall not apply to such sale. The petitioner Company purchased the entire land from National Textile Corporation Limited by an indenture dated 18th July, 2007 upon being the successful bidder in the tender for sale floated by the Corporation and the land was accordingly mutated in the name of the Company.

2. In a proceedings under section 14(T)(3) of the West Bengal Land Reforms Act, 1.176 acres of land of the petitioner Company at Sukchar mouza and 1.334 acres in Rambhadrabati mouza were declared to have vested with the State by an order dated 6th November, 2008. The Company gifted 1.3 acres of land in Rambhadrabati mouza to Panihati Municipality, being the 9th respondent herein, by virtue of a deed of gift for setting up a water treatment plant in the total area comprising 3.81 acres. An agreement was entered into between the Company and the Municipality on 4th August, 2010 to the effect that the Municipality would facilitate release of 1.176 acres of land in Sukchar mouza from vesting in lieu of an area of 1.176 acres in mouza Rambhadrabati offered by the Company. The land comprising 1.3 acres, 1.334 acres as well as 1.176 acres in Rambhadrabati mouza has been taken possession of by the 9th respondent and the water treatment plant has been constructed therein covering the gifted land, vested land as well as the offered land in Rambhadrabati mouza.

3. It is submitted on behalf of the petitioners that despite handing over the aforesaid land in Rambhadrabati mouza to the respondents for facilitating construction of water treatment plant therein which is functioning, the land in Sukchar mouza comprising 1.176 acres has not been returned to the petitioner Company in terms of the agreement entered into with the Municipality. According to the petitioner, the vested land of 1.176 acres in Sukchar mouza is part and parcel of the land of the Company under development and the Panihati Municipality has sanctioned plan for construction of building thereon on the basis of mutation in favour of the Company and has also accepted sanction fees to the extent of about Rs. 25 Lakhs. By a letter dated 9th January, 2014, the Company applied for divesting of the vested land in Sukchar mouza comprising 1.176 acres before the State respondents who by a letter dated 18th March, 2014, observed as follows:-

"Reference above, the prayer may be considered on the following grounds:-

- 1) The prayer be submitted indicating clearly the changes in retained and vested schedule, as in original 14T(3) proceeding that they intend.
- 2) Newly offered land (perhaps the land of Rambhadrabati mouza) should be free from all encumbrances.
- 3) It must be assured that the sold land to Municipality will remain their retained lands."

4. Upon receipt of the letter in this regard from the Chairman, Panihati Municipality, the Joint Secretary to the Government of West Bengal, vide letter dated 31st January, 2018 forwarded the said letter to the District Magistrate,

North(24) Parganas with a request to arrange for examination of the issue and to initiate suitable steps so that the matter could be resolved by issuance of post facto approval of the agreement entered into between the Company and the Municipality with the concurrence of the Land and Land Reforms and Refugee Relief and Rehabilitation Departments.

5. Learned counsel has prayed for a direction upon the State respondents to take consequential steps in terms of the letter dated 31st January, 2018.

6. Learned counsel has placed reliance on the authority in Maru Ram v/s. Union of India and Others along with other writ petitions reported in 1981 (1) Supreme Court Cases 107 in support of his contention.

7. Challenging the maintainability of the writ petition, learned counsel for the State respondents has taken the Court to the order of vesting of the property belonging to the company comprising 1.176 acres in mouza Sukchar and 1.334 acres in mouza Rambhadrabati by orders dated 06th November, 2008, 10th November, 2008, and 11th November, 2008 under section 14T(3) of the West Bengal Land Reforms Act. Learned counsel has further submitted that the Municipality has no authority to enter into an agreement with the company for releasing the vested land comprising 1.176 acres in mouza Rambhadrabati as the Revenue Officer is empowered under section 14T(3A) of the Act of 1955 to revise an order of vesting and determine afresh the extent of land which is to vest in the State. The authority to divest lies solely with the State and Municipality has no role to play therein.

8. Learned counsel for the Panihati Municipality has submitted that in terms of the agreement dated 4th August, 2010, the Municipality agreed to assist the owner in releasing the vested land comprising 1.176 acres in mouza Sukchar. The Municipality has requested the Joint Secretary, Government of West Bengal by a letter issued on 12th October, 2018 to regularise the matter of divesting to protect the public interest, as per resolution of the Municipality board.

9. The proposition of law laid down in the authority in Maru Ram (supra) may be relevant. The judgment refers to the authority in R.D. Shetty v/s International Airport Authority reported in (1979) 3 SCC 489 wherein the Court has held as hereunder:-

"The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance.

This rule also flows directly from the doctrine of equality embodied in Article 14. It is now well settled as a result of the decisions of this Court in E.P. Royappa v. State of Tamil Nadu and Maneka Gandhi v. Union of India that Article 14 strikes

at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory; it must not be guided by any extraneous or irrelevant considerations, because that would be, denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law."

Mathew, J. In *V. Punnen Thomas v. State of Kerala* observed:

"The Government, is not and should not be as free as an individual in selecting the recipients for its largesse. Whatever its activity, the government is still the government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal."

If we excerpt again from the *Airport Authority* case : (SCC pp.504 & 505 paras 10 & 11)

"Whatever be the concept of the rule of law, whether it be the meaning given by Dicey in his *THE LAW OF THE CONSTITUTION* or the definition given by Hayek in his *ROAD TO SERFDOM AND CONSTITUTION OF LIBERTY* or the exposition set forth by Harry Jones in his *THE RULE OF LAW AND THE WELFARE STATE*, there is as pointed out by Mathew, J., in his article on *The Welfare State, Rule of Law and Natural Justice in DEMOCRACY, EQUALITY AND FREEDOM* "substantial agreement in juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found". It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affectation of some right or denial of some privilege.

10. The present case should be dealt with in the light of such observation of the Hon'ble Supreme Court.

11. It is not in dispute that in a proceeding under section 14T(3) of the West Bengal Land Reforms Act, 1955, the land of the Company comprising 1.334 acres in mouza Rambhadrabati and 1.176 acres in mouza Sukchar has been vested with the State and an area comprising 1.3 acres in mouza Rambhadrabati was gifted by the Company to Panihati Municipality vide deed of gift dated 11th November, 2010. Possession of an area comprising 1.176 acres in mouza Rambhadrabati owned by the petitioner Company has been handed over to Panihati Municipality and the water treatment plan has been constructed in the entire area in mouza Rambhadrabati comprising 1.334 acres, 1.3 acres and

1.176 acres. The primary grievance of the petitioner Company is that despite an agreement executed by and between the Company and the Municipality for releasing the vested land comprising 1.176 acres in Sukchar mouza in favour of the petitioner in exchange of same quantum of land in Rambhadrabati mouza and also after the Company performed its part by handing over possession of 1.176 acres in Rambhadrabati mouza in favour of the Municipality, the vested land in Sukchar mouza has not been released/divested in its favour.

12. It is trite law that the Revenue Officer is empowered to revise an order of vesting and determine afresh the extent of land which to be vest in the State, according to the provision laid down under section 14T(3A) of the Act of 1955 after giving the raiyat an opportunity of being heard. In the agreement entered into by and between the Company and the Municipality on 4th August, 2010, the Municipality agreed to assist the Company in releasing the land in Sukchar mouza upon the Company allowing the State of West Bengal to vest the same area of land (1.176 acres) in Rambhadrabati mouza. In terms of the said agreement, 1.3 acres in Rambhadrabati mouza were also gifted by the Company to the Municipality. In response to the letter issued by the Joint Secretary to the Government of West Bengal on 17th July, 2018 to the Chairman, Panihati Municipality requesting to provide factual report with relevant documents to prove that prior permission was obtained before entering into the agreement with the Company to settle, release and exchange the vested land alone with the Collector, the Municipality, by a letter issued on 12th October, 2018 requested the concerned Government authority to divest the land measuring 1.176 acres in mouza Sukchar in lieu of same area of land in mouza Rambhadrabati. In the said letter the Municipality has explained that such agreement was entered into as the Municipality urgently required about 4 acres of land to set up a water treatment plant in the locality.

13. The issue between the Municipality and the State interse with regard to prior permission of the State for entering into the agreement is beyond the purview of the writ petition and it is for the Municipality and the State to deal with the same.

14. Fact remains that the petitioner Company has handed over land in Rambhadrabati mouza comprising 1.176 acres in lieu of release of the same area of land in Sukchar mouza. It is also a fact that the said land is part of the land of the Company in respect of which the Municipality has sanctioned plan for construction of a building on the basis of mutation in favour of the Company, on payment of sanction fees by the Company. By an application dated 9th January, 2014 sent to the State respondents, the Company requested for divesting of the vested land in Sukchar mouza in its favour on such terms and conditions as the State deemed fit and proper for the purpose of the development of the land as part of the housing project. Queries made by the State respondents on 18th March, 2014 in reference to the said letter were answered by the Company by a letter dated 29th April, 2014. Subsequently, the letter was issued by the Joint Secretary to the Government of West Bengal on 31st January, 2018 to the

District Magistrate, North (24) Parganas requesting the latter to initiate suitable steps so that the matter could be resolved by way of issuance of post facto approval with regard to the agreement, with the concurrence of the Land and Land Reforms and Refugee Relief and Rehabilitation Department.

15. It is pertinent to mention here that the prayer of the petitioners is governed by the provisions of the West Bengal Land Reforms Act, 1955 which is a "specified Act" under section 2(r) of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997. Section 8 of the Act excludes jurisdiction of Courts in dealing with matters relating to any provision of a specified Act.

16. Section 8 of the Act of 1997 is set out:-

"S.8. Exclusion of jurisdiction of courts.- On and from the date from which jurisdiction, power and authority become exercisable under this Act by the Tribunal, the High Court, except where that Court exercises writ jurisdiction under Articles 226 and 227 of the Constitution by a Division Bench, or any civil court, except the Supreme Court, shall not entertain any proceeding or application or exercise any jurisdiction, power or authority in relation to adjudication or trial of disputes or applications relating to land reforms or any matter connected therewith or incidental thereto or any other matter under any provision of a specified Act."

17. In view of the above, this Court has no jurisdiction to deal with the prayers of the petitioners made in the writ petition which are, in substance, for divesting of the land in Sukchar mouza under section 14T(3A) of the Act of 1955.

18. The petitioners are at liberty to approach the appropriate authority for redressal of their grievance. It is hoped and expected that the appropriate authority shall deal with the representation submitted by the petitioners dated 9th January, 2014, taking into consideration the letters dated 18th March, 2014 and 31st January, 2018 as expeditiously as possible.

19. The writ petition being WPA 2339 of 2022 is disposed of accordingly.

20. There shall however be no order as to costs.

21. Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

22. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.