
(2014) 06 CAL CK 0079
In the Calcutta High Court
Case No : WP No. 262 of 2013

Infratech Real Estate Private Limited APPELLANT
Vs
The Andaman and Nicobar Administration RESPONDENT

Date of Decision : 13-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 06 CAL CK 0079

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : Sanjay Singh, Advocate for the Appellant; Santosh Kumar Mandal, Advocate for the Respondent

Judgement

Tapabrata Chakraborty, J.—This writ application had been preferred challenging, inter alia, an order dated 8th July, 2013 passed by the respondent no. 3

2. The writ petitioner No. 1 is a tenant of landed property measuring 1.00 hectare bearing survey No. 8/4 situated at Village Dhanikhari [hereinafter referred to as the said property] and the name of the petitioner no. 1 stands duly recorded in the government revenue record of rights.

3. The petitioners contend that they have utilized the said property in consonance with the actual purpose for which it was allotted. Surprisingly, as a bolt from the blue, the petitioner No. 1 was served a notice dated 1st July, 2013 issued by the respondent no. 3 pertaining to a revenue case being R.C. No. 6/2013/SDO/1978. By the said notice, the petitioners were intimated that the said property is a hilly agricultural land and that the petitioners had been utilizing the same for some other purpose than agriculture without obtaining prior permission from the competent authority.

4. By the said notice, the petitioners were asked to stop all illegal activities immediately and to appear before the respondent no. 3 on 4th July, 2013 at 3.30 pm and to show cause.

5. Pursuant to the said notice dated 1st July, 2013, one Mr. Mahendra T. Gawai being one of the directors of the petitioner No. 1, duly appeared before the respondent no. 3 on 4th July, 2013 and submitted the reply incorporating necessary documents.

6. Immediately thereafter, the petitioners" preferred an application under article 226 of the Constitution of India alleging, inter alia, that the respondents are determined to take over physical possession of the petitioners" land forcibly.

7. The said writ application was disposed of by this court by an order dated 10th July, 2013 requesting the respondent No. 3 to dispose of the RC No. 6 of 2013 by three months from date after giving opportunities of hearing to all concerned in the matter and to pass a reasoned and speaking order.

8. Mr. Singh, learned advocate appearing for the petitioners submits that without granting any such opportunity of hearing to the petitioners, the respondent no. 3 passed an order dated 8th July, 2013 which had been impugned in the instant writ application.

9. Mr. Singh further contends that the respondent no. 3 did not grant any opportunity of hearing and passed the impugned order dated 8th July, 2013 in hot-haste and that the said order was communicated to the petitioners only on 15th July, 2013.

10. Mr. Singh draws the attention of this court to a memorandum dated 26th November, 2010 and submits that the permission was accorded by the concerned panchayat in favour of the petitioners to carry out construction work. Mr. Singh further submits that an application in the prescribed format was submitted by the petitioners to the respondent No. 3 praying for permission to use the land for the purpose of commercial resorts and hotel. Mr. Singh further submits the petitioners had not violated the provisions of Section 151(a) & (b) of the Andaman & Nicobar Island Land Revenue and Land Reforms Regulation, 1966 (hereinafter refer to as the said Regulation of 1966) and as such the impugned order is absolutely illegal and mala fide.

11. This writ application was admitted by an order dated 18th July, 2013 with a direction towards exchange of affidavits and an interim order was passed to the effect that during the pendency of the writ application, the petitioners should not be evicted from the land in question. Pursuant to such direction of this Hon"ble Court the administration had filed an affidavit-in-opposition but the petitioners had chosen not to file any reply.

12. Placing reliance upon the said affidavit-in-opposition, Mr. Mandal, learned advocate appearing for the Administration submits that the earlier writ application being WP No. 230 of 2013 was preferred by the petitioners and an order was obtained misleading the court by stating that the RC No. 06 of 2013 is still pending before the respondent No. 3 but the actual fact was that the respondent No. 3 duly heard the representative of the writ petitioner No. 1 and

disposed of the said revenue case by an order dated 8th July, 2013.

13. Mr. Mandal further submits that the petitioners had utilized the land for the purpose other than for which it was given and that the writ petitioners caused permanent injury to the agricultural land by constructing a Black Top road and also 3-4 permanent structure over the said land and that the petitioners had hatched up an evil conspiracy to sell the said land by way of plotting and to that effect the petitioner had also displayed such proposal in the website address as <http://www.infratechrealestate.com/>.

14. Mr. Mandal had emphatically argued that the petitioners had planted some Noni plants and constructed 5 Nos. Semi permanent sheds (Villas) for using as guest houses including the labour barracks and a NONI processing plant (Industrial Unit) over the said land. The specific allegation made by the respondents in the affidavit-in-opposition had not been controverted by filing any affidavit-in-reply.

15. The petitioners had approached this court by suppressing material facts. Though the petitioners' representative duly appeared before the respondent No. 3 and participated in the hearing by producing necessary documents, the petitioners suppressed such fact and obtained an order from this Court on 10th July, 2013. Had it been brought to the notice of this Court on 10th July, 2013 that the petitioners' representative had been given hearing by the respondent No. 3, the Court would not have passed the said order dated 10th July, 2013.

16. Mr. Singh had strenuously argued that the petitioners' representative was not granted any opportunity to file a reply before the respondent No. 3 but such submission of Mr. Singh does not stand averred in the writ application.

17. I have heard the learned advocates appearing for the respective parties and I have considered materials on record.

18. Perusal of the order impugned in the instant application reveals that Mr. Mahendra T. Gawai, one of the directors of the petition No. 1 appeared before the respondent No. 3 and the documents submitted on behalf of the petitioners were duly scrutinized and dealt with. The impugned order also reveals that there had been an admission on the part of the petitioners to the effect that they had utilized the said property for commercial purpose and that the petitioners had started industrial activity by constructing permanent structures.

19. All the documents as produced on behalf of the petitioners in course of hearing were duly considered by the respondent No. 3 and upon giving an opportunity of hearing to the petitioners' representative, the order was passed and the same stands supported with cogent reasons.

20. Thus, I find that there had been no error in the decision making process warranting interference of the Hon''ble Court.

21. It is well settled that a writ court ought not to transpose itself as an appellate

authority when a particular authority had performed his obligation and had rendered a decision supported with cogent reason. The discretionary jurisdiction of this court under Article 226 of the Constitution of India ought not to be invoked in such case, unless, of course, the decision so rendered by the concerned authority is palpably wrong or arbitrary or perverse or smacks of mala fide motive.

22. The order impugned had dealt with all the documents produced by the petitioners in course of hearing and had come to conclusion that the petitioners had violated the provision of section 151 of the said Regulation of 1966 and such conclusion stands supported with cogent reasons.

23. In such circumstances, no interference is called for and the writ application is, accordingly, dismissed.

24. There shall, however, be no order as to costs.