

(2004) 07 CAL CK 0051
In the Calcutta High Court
Case No : Writ Petition No. 9211 (W) of 2004

Jagadis Bose National Science Talent Search	APPELLANT
Vs	
Kolkata Metropolitan Development Authority and Others	RESPONDENT

Date of Decision : 12-07-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 114

Citation : (2004) 4 CHN 580

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : U.N. Banerjee, Arindam Banerjee and Anirban Guin, for the Appellant; P.S. Basu and S. Talukdar for Respondent No. 1 and S.B. Bhunia and A.K. Roy for the added private respondents, for the Respondent

Judgement

Barin Ghosh, J.—The petitioner, a Non-Governmental Organization, was allotted the subject plot of land by KMDA. The petitioner is such an organization, which is connected with enhancement of education. The petitioner paid a sum of Rs. 18,90,000/- as premium for allotment of the said land. This payment was made between 10th October, 1991 and 24th March, 1993. KMDA made this allotment at the request of the State Government who in turn had handed over this land to KMDA. On 1st January, 2002 the foundation stone for the proposed construction to be made on the land by the petitioner was laid by Professor Walter Kohn, the Nobel Laureate. At the time when the foundation stone had been laid, although the petitioner had paid the premium, but the conveyance had not been executed in its favour. It had then only an Indenture of License dated 26th May, 1998 executed by KMDA. The lease was ultimately executed in favour of the petitioner on 28th July, 2003 by KMDA. The petitioner then applied for and obtained a sanction from the Kolkata Municipal Corporation for construction of a building on the said land. Kolkata Municipal Corporation granted such sanction on 15th March, 2004 upon payment of a fee of Rs. 7,78,855/-. On 28th May, 2004 the petitioner engaged a contractor for the purpose of making construction on the

land. It thereupon transpired that someone else was in the process of construction of a boundary wall on the said plot of land and had removed the foundation stone laid by Professor Walter Kohn. This has resulted in filing of the present writ petition. When the writ petition was moved before me, I appointed Joint Special Officers with a direction upon them to ascertain what is the state of affair prevailing at the time of their visit. When the Joint Special Officers submitted their report, the added private respondents appeared and submitted that they were the people who are interested in the land in question and they were the persons who were responsible for removal of the foundation stone and for construction of the boundary wall.

2. Having regard to such submission, I added them as parties to the present writ petition with a direction upon them to file affidavits. The affidavits have been filed and in their affidavit, the added private respondents have contended that the added private respondents are the owners of the property in question. In the affidavit-in-opposition filed by the added private respondents, they are relying upon an application made for mutation dated 6th June, 2004 and a certificate of mutation dated 27th May, 2004. No attempt has been made to explain as to how the certificate of mutation could be given on 27th May, 2004 when the application therefore had been made on 6th June, 2004. Be that as it may, it has been contended on the strength of a xerox copy of a certificate of sale of land said to have been issued by the First Munsif at Alipore that Shri Dhiren Chandra Roy and Shri Bijoy Kumar Roy purchased the land in question on a Court sale. It has been claimed in the affidavit that subsequently there were family partitions and ultimately Pratibha Chandra Roy got the land in question and the same was registered in the R. S. Records on 29th September, 1955. Neither any record in respect of the family settlement had been produced nor any copy thereof had been handed over to me. On my enquiry it has been stated that Pratibha Chandra Roy died on 18th January, 1991. Why since 1991 until June, 2004 no step had been taken to mutate the names of the added private respondents as owners of the land in question, has not been explained or attempted to be explained anywhere even at the time of submissions. It has not been stated anywhere in the said supplementary affidavit as to why the added private respondents did not take step the moment the foundation stone was laid on the land claimed to be belonging to the added private respondents. It goes without saying that there were much fun fare at the time of laying this foundation stone and the same was reported in almost all the newspapers circulated in the State. KMDA has filed an affidavit. In that it has been stated that in 1990 itself the Government had transferred the land in question to KMDA. KMDA has filed other documents, which show that an Officer of KMDA was authorized to take possession of the land in question by the Land Acquisition Collector and he in terms of such authority did take possession of the land in question as far back as in 1970. In the conveyance there is a mention that the acquisition proceedings have not yet been completed. In the lease it has been mentioned that the acquisition proceedings have been completed. Taking a cue from such statements

it was contended on behalf of the added private respondents that if in 1990 itself the Government had conveyed the land in question to KMDA then what was the occasion for KMDA to state in the Indenture of License in 1998 that the acquisition is incomplete. It was also stated that a bare perusal of the Indenture of License and the lease would show that the acquisition was completed in between 1998 and 2003, and in such circumstances reference to 1990 conveyance by the Government in favour of the KMDA is of no importance at all.

3. In the absence of the State and the Collector I cannot decide whether the State of West Bengal did acquire title to the land in question, by acquisition or otherwise, which they made over to KMDA, who in turn passed on the same to the petitioner. KMDA is relying upon a set of documents emanating from the State, which show that the State authorized KMDA to acquire title to the property in question and also to take possession thereof. There is a presumption that the things done by the State were done with the authority of law, KMDA is contending that it authorized the petitioner to acquire title to the property as a lessee and handed over possession thereof. The fact that the petitioner was in possession of the land will be evident from the fact that they had laid the foundation stone of the building through a great educationist. It had spent money for the purpose of obtaining a sanctioned plan to make a construction on the land in question. On the other hand, the added private respondents have documents issued from the office of the J.L. & L.R.O. or B. L. & L.R.O. emanating immediately prior to filing of the writ petition, say, in the months of May and June, 2004. In such a situation the one and the only conclusion would be that while the petitioner was in possession of the land in question, the added private respondents illegally trespassed into the same and destroyed the foundation stone laid by the petitioner on the land in question. It is unfortunate that the local police sided with the added private respondents and did not immediately start a case of illegal trespass by the added private respondents into the land of the petitioner and of destroying properties of the petitioner. Instead it appears that the police by remaining a mute spectator helped the added private respondents in a most illegal manner. It was contended by the learned Counsel for the added private respondents that neither the petitioner nor KMDA was aware as to the plot number or the Dag number of the land in question and had been writing letters to know the same. The fact, however, remains that the petitioners were in possession of the land in question and had obtained a sanctioned plan to make a construction thereon, which is granted only after acceptance of the site plan, which in turn gives details of the land; as against that there is no evidence at all that the added private respondents had even a remote chance of being in possession of the land in question. The learned counsel for the added respondents reminded me that it was never submitted on behalf of the added private respondents that the foundation stone was broken by them. It may be so, but I have no other option but to suspect that it is they who are responsible for the destruction of the foundation stone laid by the Nobel Laureate as reported to me by my Joint Special Officer. I make it absolutely clear

that I have not gone into title but I have only tried to ascertain whose case about possession, immediately before the private respondents started constructing the wall, is more convincing and I have no other option but to hold in favour of the petitioner.

4. In such view of the matter, I direct the Inspector-in-Charge, Kasba Police Station, to ensure that except the petitioners, or persons authorized by the petitioners, no one steps into the land in question, in any manner whatsoever. The Inspector-in-Charge, Kasba Police Station, is directed to see that the added private respondents do not even get an opportunity to step into the land in question, unless authorized to do so by a competent Court of Law. In the event any of the added private respondents steps into the land in question, the Inspector-in-Charge, Kasba Police Station, is directed to forthwith arrest such of the added private respondents. The Inspector-in-Charge, Kasba Police Station, is directed to lodge a First Information Report on the basis of the prima facie view expressed by this Court, as depicted above, on a copy of this order, against each of the added private respondents for illegal trespass into the land in question and to complete the investigation as quickly as possible and to appropriately report the matter to the concerned Magistrate in accordance with the law. Inasmuch as I have no means to know as to how much financial harm the added private respondents have done to the petitioner and its institution, I refrain from awarding compensation in favour of the petitioner but expressly permit them to initiate appropriate proceeding against the added private respondents for recovery thereof. Inasmuch as the added private respondents interfered with the possession of the petitioner, it shall be open to the petitioner to put back the property in the manner they want and for that matter, if necessary, to remove the boundary wall constructed by the added private respondents. The private respondents shall be at liberty to approach such Court of Law as they may be advised to establish their title to the property in question and also for restoration of possession thereof.

5. There shall be no order as to costs.

6. If urgent xerox certified copy of this order applied for, be given to the parties as early as possible.