

(2015) 02 CAL CK 0055

In the Calcutta High Court

Case No : A.P.O. 107 of 2014, G.A. 1023 of 2014 and W.P. 866 of 2012

Mohanlal Rajgarhia

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 23-02-2015

Acts Referred:

Calcutta Improvement Act, 1911 — Section 78
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10

Citation : (2015) 02 CAL CK 0055

Hon'ble Judges : Manjula Chellur, C.J.;Arijit Banerjee, J.

Bench : Division Bench

Advocate : Bikash Ranjan Bhattacharya, Senior Advocate, Kumar Gupta, Nibedita Pal, A.G. Mukherjee, for the Appellant; Sadhan Roychowdhury and T.M. Siddique, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Arijit Banerjee, J.—This is an appeal against the judgment and order dated 21st March, 2014 passed by the Ld. First Court, dismissing the appellant's writ petition being WP No. 866 of 2012.

Contention of the appellant:--

2. The appellant owned a parcel of land, comprised in premises No. 211C and 211E Bagmari Road, Calcutta, measuring an area of about 37 Cottahs 4 Chhitacks 17 sq. ft.

3. A declaration dated 4th August, 1954 was issued by the concerned authority for acquisition of the said land for the purpose of an Improvement Scheme. By a letter dated 20th January, 1960 the appellant applied under Section 78 of the Calcutta Improvement Act for exemption of the said land from acquisition. By a letter dated 12th April, 1960, the Calcutta Improvement Trust (in short CIT) informed the appellant that the application for exemption was barred by limitation.

4. The appellant challenged the said decision of CIT by way of a writ petition being Matter No. 175 of 1961 which was disposed of by this Court by an order dated 9th January, 1962 recording the assurance of CIT that the appellant's application shall be considered if made within time.

5. By a letter dated 3rd April, 1962 CIT intimated the appellant that his application for exemption was rejected as being time barred. The appellant challenged the said decision by way of a writ petition being Matter No. 153 of 1962 which was disposed of by an order dated 22nd June, 1965 by issuance of a writ in the nature of mandamus commanding the respondents not to acquire the portion of the appellant's land which was not required for exemption of the Improvement Scheme. A writ of certiorari was also issued quashing the acquisition proceeding

6. By agreement between the parties the CIT acquiring a portion of the said land measuring about 7 Cottahs and 13 Chhitacks for a sum of Rs. 12,494/- and the remaining portion of the land was exempted from acquisition against payment of a betterment fee of Rs. 21,500/-.

7. Pursuant to the said agreement dated 14th September, 1968, it was obligatory on the part of the CIT to handover the balance land measuring about 29 Cottahs 7 Chhitacks to the appellant. However, the authority handed over only 22 Cottahs of and to the appellant and withheld about 7 Cottahs 7 Chhitacks of land. The appellant did not challenge this.

8. In 1974 the appellant entered into four agreements for sale of the said 22 Cottahs of land which was already in occupation of the intending purchasers and received the consideration in respect thereof. Thereafter, pursuant to a Court decree, deeds of conveyance were executed in favour of the intending purchasers.

9. Subsequently, the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 vested the entire land in the State by issuing a notification under Section 10 of the 1976 Act. The purchasers filed writ petitions in the year 1989 challenging the said notification and by an order dated 22nd November, 1990 this Court quashed the notification with liberty to the concerned authority to proceed de novo upon service of notice on the purchasers.

10. In 1993 the appellant filed a writ petition being Matter No. 4307 of 1993 challenging the authority's failure to hand over possession of the remaining portion of the land measuring about 7 Cottahs. In the affidavit-in-opposition, the CIT stated that the said 7 Cottahs of land had been converted into a park. The writ petition was disposed of by an order dated 9th March, 1994 directing the CIT to make over possession of the disputed 7 Cottahs of land to the appellant within two months.

11. Upon CIT's failure to hand over possession of such land, the appellant filed a contempt petition being Matter No. 520 of 1995. By an order dated 15th May, 1995 this Court directed CIT to hand over possession of the 7 Cottahs of land to

the appellant on 8th June, 1995.

12. On 8th June, 1995 the appellant went to the site where he found officers of CIT and police authority were present. The appellant was compelled to sign on a pre-typed paper stating that the physical possession has been taken over by him. In fact, the said land was part of a park and remained in the possession of CIT.

13. By a notification dated 5/9th April, 1999, the authority under the 1976 Act (ULCER) started de novo proceedings for vesting the entire land including that of the four purchasers. By a letter dated 17th January, 2000 the authority informed the appellant that it had taken over possession of land measuring 503 sq. meters appertaining to premises No. 211C Bagmari Road, Calcutta.

14. The order of vesting was challenged by the purchasers. This Court by an order dated 16th December, 2003 set aside the order of vesting. The State of West Bengal preferred an appeal which was disposed of by an order dated 28th November, 2007 by recording the settlement between the parties and without passing any order thereon.

15. In view of the setting aside of the vesting, the appellant made a representation dated 15th June, 2012 to the CIT for handing over possession of the 7 Cottahs of land to the appellant, but in vain.

16. In the above factual background the appellant filed the writ petition, inter alia, praying for a direction upon the respondents to demarcate 503 sq. meters of land (approximately 7 Cottahs) comprised in premises No. 211C Bagmari Road, Calcutta-700054 and hand over physical possession thereof to the appellant.

Contention of the respondents:--

17. Mr. Sadhan Roychowdhury, Ld. Senior Counsel, appearing on behalf of the State drew our attention to page 59 of the paper book which is a memorandum dated 8th June, 1995 recording that the appellant had taken over possession of the disputed 7 Cottahs of land. He submitted that in view of the aforesaid the appellant cannot have any legitimate grievance and the writ petition is completely meritless.

18. Appearing for the Calcutta Improvement Trust, Mr. P.S. Basu, Ld. Senior Counsel submitted that in 1995, 7 Cottahs of land was handed back to the appellant as would be evident from the document at page 59 of the paper book. However, in 1999 there was again vesting and the competent authority under the 1976 Act (ULCER) gave actual possession of the concerned 7 Cottahs of land to the CIT. It was further submitted by Mr. Basu that the 1999 vesting of the land comprised in Premises No. 211C Bagmari Road, Calcutta, subsists and the same was not set aside by the judgment and order dated 16th December, 2003 passed on the writ application of the purchasers. The said writ application pertained to the portion in occupation of the purchasers which was appurtenant to 211E Bagmari Road, Calcutta. He submitted that the Ld. Judge rightly dismissed the

writ petition and the appeal should also be dismissed.

Court's View:--

19. We have considered the rival contentions of the parties as well as the impugned judgment. The Ld. Judge noted that against the order dated 16th December, 2003 passed by the Single Judge of this Court setting aside the vesting, the State of West Bengal preferred an appeal which was disposed of on 28th November, 2007 by the Division Bench. The Division Bench recorded that the appeal pertained to 211C and 211E Bagmari Road, Calcutta. It further recorded that there were agreements for sale between the present writ petitioner and Satish Kumar Gupta and two others for purchase of a portion of the premises. Suits were filed by them for specific performance of the agreements for sale and decrees obtained by them in July, 1987. The Division Bench also noted the presence of "17 settlee" in the said premises. The Division Bench then recorded a settlement between the said 17 persons, Satish Gupta and two others and the State. It was recorded that Mr. Gupta and the other two persons had agreed to construct a multi-storied complex on the land. Sixteen flats would be delivered to 16 settlee and the 17th occupier would be paid monetary compensation. The appeal was disposed of on those terms.

20. The Ld. Judge went on to hold that whether the dispute which was before the Appeal Court included 503 sq. meters or not is a highly disputed question of fact and the writ court will not inquire into such factual dispute. It is for the writ petitioner to establish in an appropriate forum that the concerned 503 sq. meters were not included within the fold of the settlement as recorded by the appeal court in its judgment and order dated 28th November, 2007 and till such time the question of returning of land or payment of compensation by the State would not arise.

21. We are in agreement with the Ld. Judge. The notification dated 5th April, 1999 issued under the Urban Land (Ceiling and Regulation) Act, 1976 pertained to both 211C and 211E Bagmari Road, Calcutta in respect of vacant land to the extent of 1993.24 sq. meters. Out of this 821.55 sq. meters pertained to 211C Bagmari Road, Calcutta and 1171.69 sq. meters pertained to Bagmari Road, Calcutta. The declaration dated 1st November, 1999 issued by the competent authority under the 1976 Act also pertained to both the premises No. 211C and 211E Bagmari Road, Calcutta. The vesting was challenged by the purchasers but not by the present writ petitioner. It is not clear whether the present writ petitioner was represented before the appeal court which heard the appeal from the judgment and order dated 16th December, 2003 which quashed the vesting. Be that as it may, even after passing of the judgment and order dated 28th November, 2007 by the appeal court, the present writ petitioner did not take any steps for modification or recalling of the said order. The writ petitioner ought to have approached the appeal court with a prayer to keep the concerned 503 sq. meters of land outside the purview of the settlement recorded by the appeal court. He did not do so.

22. It appears to us that the appeal court's order dated 28th November, 2007 encompasses the entirety of the land sought to be acquired by the State Government. The appellant would, however, contend that the concerned 503 sq. meters of land was not the subject matter of settlement recorded by the appeal court. However, this is a disputed question of fact which we are not inclined to go into.

23. Whether the vesting was set aside entirely or only partially by the judgment and order dated 16th December, 2003, becomes insignificant in view of the appeal court's judgment and order dated 28th November, 2007. The appeal court's order records a settlement which pertains to the entire land sought to be acquired and no exception appears to have been made for the concerned 503 sq. meters of land. We are in agreement with the Ld. Judge that whether or not the 503 sq. meters of land was outside the purview of the settlement recorded by the appeal court's order dated 28th November, 2007 is a disputed factual issue which has to be adjudicated upon and resolved by a Civil Court or any other proper forum and not by the writ court. Only if the appellant is able to establish as a matter of fact that 503 sq. meters of land was not the subject matter of the settlement recorded by the appeal court's order dated 28th November, 2007, the question of returning such land to the appellant would arise.

24. For the reasons aforesaid, the appeal fails and is dismissed. The Ld. Judge's order dated 21st March, 2014 is affirmed. There will, however, be no order as to costs.

Manjula Chellur, C.J.

I Agree.