

(2017) 07 CAL CK 0028
In the Calcutta High Court
Case No : 1398 of 2008

M/s Bhuwalka Trading & Tea Co. (P) Ltd. & Ors.

APPELLANT

Vs

The State of West Bengal & Anr.

RESPONDENT

Date of Decision : 13-07-2017

Acts Referred:

[Urban Land \(Ceiling and Regulation\) Act, 1976](#), [Section 20](#), [Section 20](#), [Section 9](#), [Section 10\(1\)](#), [Section 8\(1\)](#), [Section 6](#)

Citation : (2017) 07 CAL CK 0028

Hon'ble Judges : Tapash Mookherjee

Bench : SINGLE BENCH

Advocate : Shakti Nath Mukherjee, ? Amiya Naryan Mukherjee,?Noelle Banerjee, ?Dipak Dey,? Abhrotosh Majumder, Supratik Dhar

Judgement

1. Proceedings and vesting orders passed by the Competent Authority, Calcutta, under The Urban Land (Ceiling and Regulation) Act, 1976 (in short, ULC Act .) in UL Case No. (i) 6(1)/13 Vol. 16 of 1976, (ii) 6(1)/66. Vol. 4 of 1976; (iii) 6 (1)/13, Vol. 16 of 1976; (iv) 6(1)/14, Vol. 5 of 1976; (v) 6 (1) 65, Vol- 4 of 1976, are in challenge in the present Writ Petition.

2. Two properties are involved in the aforesaid vesting proceedings under the provisions in the ULC Act . One such property measuring 4232.67 sq. Mtrs, hereinafter described as the first property, situate at 141 Netaji Subhas Chandra Bose Road, Kolkata 700 042. According to the Petitioners, the said property was purchased by the Petitioner No. 1/Company by a registered deed of conveyance dated 16th October, 1947. Subsequently the

property was leased out to Army by registered deed dated 1st July, 1960. Thereafter, the Petitioner No. 1 by a registered deed dated 24th May, 1967 leased out the property to Basant Corporation, the Petitioner No. 5 in the case. The property was at different point of time under the occupation of the U. S. Army, Indian Army and lastly under the Kolkata Police Authority and used as their Barrack for the accommodation of Kolkata Police personnel. However, the property was vacated in due process of law and Basant Corporation, i. e., the Petitioner No. 5 is now in physical occupation of the property.

3. The other property, hereinafter described as the second property, consists of permanent structures and dwelling units, situate at 14 and 14/1, Ariff Road, Kolkata- 700 067. According to the Petitioners, the Petitioner, No. 1 acquired the property by a registered deed of conveyance dated 30th October, 1961 and thereafter the Petitioner No. 1 leased out some the portions of the property by two registered deeds dated 22nd July, 1974, to the Petitioner No. 3 and 4 who are now in possession of the property leased out to them.

4. It is alleged by the Petitioners that although there was no vacant land in excess of the ceiling limit under the ULC Act, but due to their wrong understanding of the law they filed statement under Section 6 (1) of the ULC Act as an abundant precaution. It is further alleged by the Petitioners that although there was no vacant land in any of the two properties, liable for vesting under the ULC Act, but still the Competent Authority without any inquiry whatsoever, assessed some quantum of land as excess in both the two properties just on the basis of their erroneous statement and prepared a draft statement accordingly. The said draft statement was served upon the Petitioners but as an application for exemption under Section 20 of the ULC Act, submitted by them was lying pending, they could not file any objection under Section 8 of the Act. Subsequently a final statement was prepared and published declaring considerable portions of the two properties as vested,

being excess land. It is the further case of the Petitioners that sometime in the first week of July, 2008 they suddenly got the information of the aforesaid order of vesting and immediately thereafter they filed a Writ Petition which was dismissed for default.

5. The sum and substance of the Petitioners' grievance is that the Competent Authority while passing the order of vesting did not consider the actual quantum of land which the Petitioners were entitled to retain, as per the different provisions in the ULC Act, and thus the Competent Authority acted illegally and arbitrarily violating all the principles of law and natural justice.

6. The State/Respondents filed a joint Affidavit-in-Opposition by which they disputed all the material allegations in the Writ Petition. In addition, the Respondents in para 3 of the Affidavit-in-Opposition pleaded some specific cases in support of their actions. According to the Respondents the Petitioner No. 1, 3 and 4 submitted return under Section 6 (1) of the ULC Act, on the basis of which the Competent Authority determined the excess land liable to be vested in their account and accordingly the draft statement was prepared and served upon both the lessor and the lessees of the lands in question. But no objection against such draft statement under Section 8 (1) of the ULC Act, was submitted either by the lessor or by the lessee and hence the final statement was prepared and published on the basis of such returns, so far as the first property was concerned. It was the further specific case of the Respondents, stated in para 3 (c) of their Affidavit-in-Opposition that in case of the second property, it was found on inquiry that the lessee in the land held excess vacant land beyond the ceiling limit and a draft statement was accordingly published and served upon the lessee. The lessee submitted an objection through an authorised representative who attended the hearing and after hearing him the final statement was prepared and served upon the lessee and thereafter the notification under Section 10 (1) of the ULC Act was prepared and published. It is further

added that the application under Section 20 of the ULC Act was rejected by the Competent Authority prior to such hearing. Thus, the State/Respondents in their Affidavit-in-Opposition tried to justify the orders passed by the Competent Authority and impugned in this Writ Petition.

7. Learned Senior Advocate Mr Shakti Nath Mukherjee appearing for the Petitioners argued that according to the definition of the term "to hold" in Section 2 (L) of the ULC Act, the owners and the tenant, lessee and mortgagee etc. are different and independent entities and according to Section 4 of the ULC Act prescribing the ceiling limit, every such person is entitled to hold vacant land separately within the ceiling limit, but the Competent Authority ignored it. It was his further contention that the each structures standing upon both the properties in question and the land appurtenant to each such structures and the land which are required to be excluded while determining the ceiling limit were not considered at all by the Competent Authority. It was also his contention that no inquiry was held to determine the physical condition of the properties in question and no notice was served according to law upon the owner and the lessee/occupant while determining the vacant land by the competent Authority as required in law and all exercise was done by the Competent Authority behind the back of the Petitioners

8. Mr Mukherjee admitted that the Petitioners submitted Return under Section 6 (1) of the ULC Act wherein some quantum of land was noted as "vacant land", on the basis of which the draft statement under Section 8 and final statement under Section 9 of the ULC Act, was prepared and notification under Section 10 (I) of the ULC Act, was ultimately published by the Competent Authority. Mr Mukherjee urged that there cannot be any estoppel against law and the principle of estoppel does not operate in a case where truth is accessible to both the parties. So, the Competent Authority committed a gross error in law by accepting the statement under Section 6 (1) of the ULC Act as conclusive, without any field inquiry to ascertain the

real condition of the Suit Properties. According to Mr Mukherjee, no person should be deprived of his property without any authority of law as stated in Article 300 A of the Constitution of India. So, it was the legal duty of the Competent Authority to ensure that all the exemptions and benefits according to law, were given to the persons entitled to them. So, an effective inquiry was a must for such purpose. But, no inquiry whatsoever was conducted by the Competent Authority before taking the decisions, which resulted in miscarriage of justice. The gist of Mr Mukherjee's contention was that all the actions and decisions of the Competent Authority are against the legal provisions in the ULC Act as well as against the principles of natural justices. So, the proceedings and the orders by the Competent Authority, impugned in this Writ Petition, should be all quashed and the Competent Authority should be directed to re-look into the matter.

9. Mr Mukherjee has cited the following decisions to support his contentions (1) (2003) 7 Supreme Court Cases 336 (State of Maharashtra and Another - versus - B. E. Billimoria and Others), (2) 1979 (1) C.L.J. 427 (Krishna Narayan Mukherjee - versus - State of West Bengal and Others), (3) 2014 (1) C.H.N. (Cal) 1 (David Mantosh - versus - Apollo Gleneagles Hospital Ltd), (4) AIR 1984 Supreme Court 516 (Workmen of M/s Hindusthan Liver Limited and others - versus - Management of M/s Hindusthan Liver Limited).

10. Learned Additional Advocate General, Abhrotosh Majumder appearing for the State/Respondents has submitted that since the Petitioners themselves submitted statements under Section 6 of the ULC Act, admitting having excess vacant land and also since the Petitioners admittedly submitted an application under Section 20 of the ULC Act, praying for exemption from vesting of their lands, the Petitioners cannot be permitted to disown, the facts voluntarily pleaded by them and approbate and reprobate at the same time, in the proceeding initiated by the Competent Authority. So, the Competent Authority has committed no wrong in law by

determining the excess vacant land within the Suit properties on the basis of such statements of the Petitioners.

11. Mr Majumder has admitted that there was no inquiry, but according to him an inquiry is not mandatory as per the provision in Section 8 of the ULC Act. It was the further contention of Mr Majumder that although no formal inquiry was conducted but the notice was served upon the Petitioners according to law, at all stages, and the lessee appeared also, in the proceeding in connection with the second property. So, all the provisions of law have been duly followed and complied with by the Competent Authority before publication of the final statement and notification under Section 10 (I) of the ULC Act.

12. Learned Additional Advocate General Mr Majumder has submitted the decision of the Apex Court reported in (2010) 13 Supreme Court Cases 158 (Omprakash Verma and Others - versus - State of Andhra Pradesh and Others), in his support and according to him in view of such decision of the Hon"ble Apex Court the Petitioners' claims in the Writ Petition are devoid of any legal basis.

13. There were structures and dwelling units as well, in the first property, i. e., the property at N. S.C. Bose Road as found from Annexure A, B, C, D and E, to the supplementary affidavit filed by the Petitioners. The first property was under the occupation of US Army and lastly under the occupation of Kolkata Police. In an Affidavit-in-Opposition filed on behalf of the Commissioner of Police, Kolkata, in a previous case, i. e., AST No. 2361 of 2008 it was stated that the property was being used by the Kolkata Police for the purpose of residence of the Police personnel as well as storage of their arms and ammunition (Annexure- E to the supplementary affidavit). The said Affidavit-in-Opposition was filed in the year 2008, i. e., long after ULC Act came into force. During the pendency of this appeal an informal inspection was held by the officers of the ULC department and the report was submitted in due course and it is on record. From that report also it is

found that there are still some dilapidated structures upon the land.

14. There were residential structures upon the second property also, i. e., the property at Ariff Road as found from a deed of lease marked as letter-"I" in the supplementary affidavit by the Petitioners.

15. A detailed description of structures upon the two properties have been mentioned in para 4.2 at page -9 and para 5.3 at page - 12 in the supplementary affidavit by the Petitioners. In those descriptions it has been claimed that the Petitioners have according to law, retainable land far above the total area of the two properties. Evasive denials are the replies of the State to the points.

16. Land appurtenant to any building is required to be excluded from the computation of the excess land to the extent mentioned in the Section 2 (G) of the ULC Act. According to Section 2 (Q) (I) "vacant land" does not include land on which construction is not permissible under the building regulations applicable in any area where there is such building regulations. The issue has been discussed in detail in Billimoria's case (supra).

17. It is not found from any material on record, whether the aforesaid provisions of law were followed while determining the question of excess vacant land, by the competent authority in the present case.

18. According to the provisions of ULC Act, owner and lessee, tenant, mortgagee, etc., as the case may be, are different entities and they are entitled to retain specific quantum of land each. In the present case it is not found that the law on the point has been considered by the competent authority. For instance, in the case of the first property, the Petitioner No. 5 which is a lessee in the land has not been allotted for retention any quantum of land separately. In case of the second property, the Petitioner No. 1 which is the owner of the land has not been allotted any quantum of land for retention. The entitlement of the Petitioner No. 1 has not been determined at all so far as the second property is concerned.

19. According to Rule 5 of the Urban Land (Ceiling and Regulation) Rules

1976, draft statement must be served together with the notice on the holder of the vacant lands and on all other persons who have or likely to have any claim to, or interest in the ownership or possession or both, of the vacant land and such notice must be sent by registered post only, and absence of such notice vitiates the entire proceeding. David Mantosh's case (supra) is relied on the point. It is not found in the present case that the draft statement under Section 6 of the ULC Act has been served upon the Petitioner No. 1, who is the owner of the first property. The final statement under Section 9 of the Act is not also found to have been served upon the Petitioner No. 1, although it was admittedly sent to the lessee. In case of the second property, the notice under Section 10 (1) of the ULC Act was issued to one of the lessees only although the other lessee as well the owner have substantial interest in the property.

20. According to Mr Majumder, since the Petitioners themselves submitted their statement under Section 6 (1) of the ULC Act and subsequently filed another application also under Section 20 of the Act, praying for exemption of their land from vesting, and thereby admitted having excess vacant land, liable for vesting, the Petitioners are estopped from claiming anything in contrary to their statements submitted before the Competent Authority. So, the Competent Authority rightly assessed the vacant land on the basis of such statement by the Petitioners themselves. Mr Majumder has strongly relied upon the decision of the Hon"ble Apex Court in Omprakash Verma's case (supra) on the point. In the said case it was held that the owner of a land cannot approbate and reprobate at the same time. In the aforesaid case some conducts of the Petitioners were considered strongly against the Petitioners. One such conduct was that the Petitioners in that case, took up a plea in the Land Reforms Tribunal that their lands vested as excess land under the Land Reforms Act were not agricultural land but urban land and hence their lands were not liable for vesting under the Land Reforms Act, and accepting such claim the lands once declared as vested under the Land

Reforms Act were released and returned to the Petitioners in the case. Subsequently the same Petitioners took up a contrary plea in the Tribunal under ULC Act, to the effect, that their lands were not urban lands but agricultural land. Because of such contradictory claims at different stages before the different authorities, the Hon"ble Apex Court rejected the Petitioners" claims as a whole on the principle that "a person cannot approbate and reprobate in respect of the same transaction." But in the present case there is no such circumstances.

21. In the present case the Petitioners" plea was that they submitted their statements under Section 6 (1) of the ULC Act and application under Section 20 of the Act, under a wrong impression of the ULC Act which came into force just a few months before their submissions of such statement and application and by the present Writ Petition the Petitioners pray for opportunity to rectify their mistakes. So, the principle laid down by the Hon"ble Apex Court in Omprokash Verma"s case (supra) cannot be applied in the present case.

22. I am in full agreement with Mr Mukherjee to the point that a person cannot be deprived of his lawful property without any authority of law as stated in Article 300 A of the Constitution of India. So, before passing any order of vesting the Competent Authority ought to have satisfied itself by appropriate inquiry, that all statutory provisions in the ULC Act were properly applied and all the exemptions and benefits given by the law were given to the owner and lessees of the lands in question.

23. The statement by the owner or lessee of the land, may be considered as a relevant factor but it should not have been considered as conclusive and absolute, as there cannot be any estoppels against a statute and rule of estoppel cannot be applied where truth is accessible to both the parties like the present case. The observation in the concluding part of the para 14 in the Krishna Narayan Mukherjee"s case (supra) is relied on the point.

24. Learned Advocate Mr Majumder admitted during hearing that there

was no inquiry by the Competent Authority before taking the decisions but it was his contention that inquiry is not mandatory under Section 8 of the ULC Act.

25. Section 8 (1) of the Act says "on the basis of the statement filed under Section 6 and after such inquiry as the Competent Authority may deem fit to make the Competent Authority.....". What the Section says, is the manner and process of inquiry should be decided by the Competent Authority. But the Section does not say that no inquiry is necessary at all. So, the contention of Mr Majumder is not acceptable. In fact, in a case like the present one, an effective inquiry is essential to determine the excess vacant land liable to be vested, if any.

26. The statement under Section 6 (1) of the ULC Act submitted by the Petitioner has not been produced by the State/Respondent. It is, therefore, not known as to who in particular, submitted it and what was stated in such statement. Similarly, the alleged order rejecting the Petitioners' application under Section 20 of the ULC Act for exemption has not also been produced. No document in connection with the alleged notices and their acknowledgment has been produced. So, what notice was served and in which manner and who received them cannot be correctly ascertained.

27. In fact, no document of the proceeding in question has been filed by the State/Respondents. So, the basis of the Competent Authority's decision at different stages of the proceeding cannot be looked into.

28. So, from what has been discussed above it is clear that the proceeding against the Petitioners, challenged in this Writ Petition and the orders of the Competent Authority passed therein, suffer from serious illegalities. The proceedings as well as the orders passed at different stages are not, therefore, sustainable in law.

29. In view of the decisions above the proceeding initiated by the Competent Authority, Kolkata, under ULC Act, in connection with the properties involved in the present Writ Petition and the orders and

notifications passed in the proceedings and impugned in this Writ Petition, are all set aside. The Competent Authority will compute the legal entitlement of the Petitioners and excess vacant land, if any, afresh, after following the relevant provisions in ULC Act mentioned hereinabove and other legal provisions as well, after an effective inquiry and pass fresh orders after giving the opportunity of hearing to the Petitioners, according to ULC Act and Rules. The Writ Petition is accordingly allowed.

30. Urgent Xerox certified copy of this judgment, if applied for, be supplied to the learned Advocates for the parties upon compliance of all formalities.