
(1992) 09 CAL CK 0011
In the Calcutta High Court
Case No : Civil Order No. 11199 (W) of 1987

Nirmal Krishna Dutta

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 04-09-1992

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(2), 10(3), 2, 8

Citation : 97 CWN 413 : (1993) 1 ILR (Cal) 66

Hon'ble Judges : S.K. Mookherjee, J

Bench : Single Bench

Advocate : Aloke Chakraborty and Fazlul Haque, for the Appellant; S.K. Dutt and D.K. De for State and Balai Chandra Roy and B.B. Ghosh, for the Respondent

Judgement

S.K. Mookherjee, J.—The present application for writ is directed against a suo motu proceeding and orders passed under Urban Land (Ceiling and Regulation) Act, 1976, hereinafter referred to as the said Act.

2. The subject-matters of the said proceeding are premises Nos. 32 and 33, Ismail Street, within P.S. Entally. The Petitioners claim to be heirs of one Hari Pada Dutta, since deceased, who is alleged to be lessee with regard to premises No. 33 and thika tenant with regard to premises No. 32, Ismail Street. According to the Petitioners, premises No. 33 comprised of a tank and a graveyard along with some structures constructed by the said Hari Pada Dutta as thika tenant, which were let out to bharatias, the entire area of 32 Ismail Street is covered by various structures, save and except the passage for use of such structures. The Petitioners further contend that the said Hari Pada Dutta had been paying rent to the owners of the said properties, viz. Md. Manzoorul Haq, whose father was Moulavi Suvan Ali Khan, that from 1925 till 1964 the Petitioners or their predecessor-in-interest had been paying rent to the owners whereafter such payment could not be continued due to the owner having become untraced ; the Petitioners had been continuing to possess the said two premises peacefully realising rents from the sub-tenant and carrying on pisciculture in the tank ; that

on attempted raising of a boundary wall by one Emanullah, certain proceedings had to be initiated by the Petitioners and, on enquiry being made, the Petitioners allegedly came to know about purported acquisition of premises No. 32, Ismail Street, and that such acquisition proceeding was initiated at the instance of the Respondent No. 6, Jana Swastha Sahay, with respect to premises No. 33, Ismail Street, under Urban Land (Ceiling and Regulation) Act and the said Emanullah was authorised to act for the said Respondent No. 6. From the xerox copy of a notice it appeared that the said premises No. 33, Ismail Street, had been treated as a vacant land though it was covered fully by structures. It further appeared that the declaration relating to the said land related to the premises No. 32, Ismail Street, and that possession of the premises No. 33 had been handed over to the Respondent No. 6 through Calcutta Improvement Trust.

3. The Petitioners filed an objection u/s 8 of the Urban Land (Ceiling and Regulation) Act, canvassing detailed factual position and the reasons as to why the property could not vest under the provisions of the said Act and, in pursuance of that objection, the Petitioners were given a hearing in course of which entire documentary evidence relating to the said two properties had been produced by the Petitioners before the competent authority. The Petitioners further came to know allegedly that the earlier stages of the proceeding had been completed or carried out upon service of notice on a deceased owner. viz. Sovan Ali Khan, though the name of the Petitioners appeared in the assessment record of the Calcutta Municipal Corporation. Under the aforesaid circumstances the Petitioners have brought this writ application with prayers for mandates on the Respondents to recall or rescind the suo moto proceeding or the orders passed therein as also for quashing of such proceeding and such orders.

4. Notices of the application having been served on the Respondents the State Respondents as also the allottee Respondent No. 6 had appeared before this Court and had filed their respective affidavits-in-opposition. Records of the connected case before the competent authority had also been produced before me for perusal and consideration. I have heard the respective Learned Counsels representing the different contesting parties.

5. Before taking up the contentions on merit, I would like to take note of certain factual position, which appears or emerges from the affidavits filed on behalf of the contesting Respondents. From the affidavit-in-opposition of the State Respondents, it appears that whatever notices had been served in purported compliance with the statutory provisions, the same had been served on the estate of Sovan Ali Khan and on none of the Petitioners, even an objection filed on behalf of the Petitioners was not taken into consideration prior to the stage of Section 10(2) of the aforesaid Act on a view that the Petitioners did not fall within the purview of the definition of "holder" as given in the Act, no valid document could be produced by the Petitioners and, as such, as their objection was rejected, though the proceeding under Section. 10(3) had been completed by publication of a notification on September 15, 1987, declaring the acquisition

of excess land at 33 Ismail Street and though possession thereof was taken on October 19, 1987, an erratum purporting to correct the description of the land, possession of which had already been taken as above, was published on November 20, 1987, and on the same date, i.e. November 20, 1987, the possession of allegedly acquired land had been delivered to the Respondent No. 6 the competent authority was covering under a legal misconception that due to non-payment of rent by the Petitioners or their predecessor-in-interest as thika tenants, the tenancy automatically came to an end, and although their names appeared in the Municipal records they could not be treated as "holders" within the meaning of Section 2(i)(1) of the aforesaid Act ; the alleged inspection of the two premises had been done in the absence of the Petitioners ;that existence of the tank was admitted though existence of the structures was disputed, the allegation against the Petitioners was that excepting the Lease Deed of 1922 no other document could be produced by the Petitioners.

6. From the affidavit-in-opposition on behalf of the Respondent No. 6, it is elicited that the Respondent No. 6 obtained possession of the disputed plots or premises on April 30, 1987, on a long term basis and from the fourth quarter of 1987-88 the two plots, on amalgamation, were re-numbered as 32/1, Ismail Street.

7. With the affidavit-in-reply a number of documents had been disclosed on behalf of the Petitioners imparting, at least, colour of legal title to their occupation of the disputed properties. It is significant to note, at this stage, that from the records of the competent authorities produced before this Court, I have found a hand-written list of various documents disclosed by the Petitioners before such competent authority.

8. Some decisions have been referred to on behalf of the Petitioners in course of hearing. From an analysis of the said decisions, the ratio which a Court of law ought to apply in dealing with such cases, becomes discernible without much difficulty. In the first place, the principle is that a person holding land below the ceiling need not file a return: vide the case of *Ajita Ray v. The Competent Authority* 1989 (1) C.L.J. 9 decided by me. Secondly, a tank is not a building site in terms of the Calcutta Municipal Act and, as such, cannot be said to be a land on which construction of building is possible ; Clause (1) of Section 2(q) takes this land out of the category of vacant land ; thirdly, the Urban Land (Ceiling and Regulation) Act, being an expropriatory statute, requires strict construction: vide the case of *Sm. Srila Moitra Vs. State of West Bengal and Others*, would like to add to the above, another principle that an act if required to be done by a statute in a particular manner it has to be done either in that manner or not at all: vide. *State of Gujarat Vs. Shantilal Mangaldas and Others*,

9. In the facts of the present case as outlined hereinbefore the impugned order of vesting has been passed not only in a glaringly perverse manner overlooking all relevant facts and documents but also in absolute contravention and breach of the legal principles as summarised above. It would not be unreasonable to

conclude, from the manner in which the proceedings had been carried on that the conclusion was a foregone one. The non-service of any notice on the Petitioners, who clearly fall within the definition of "holders" as given in the aforesaid Act renders the proceeding totally illegal and unenforceable being in contravention of statutory provisions and being flagrantly violative of the principles of natural justice and the plea taken on behalf of the Respondents that the opportunity of hearing afforded on the conclusion of the final stage cured such procedural irregularity, is unsustainable in view of the Supreme Court's decision quoted and referred to hereinabove. As regards premises No. 33, it is not intelligible as to how possession could be delivered on April 30, 1987, when even on the stand taken by State Respondents, it could obtain possession only on October 19, 1987, following the notification under Section. 10(3) of the aforesaid Act published on September 5, 1987. Contradictory dates of delivery of possession clearly spell out the collusion and mala fide between the Respondents, which the Petitioners have alleged in no unmistakable term.

10. In the circumstances I allow the application for writ and direct that a writ of mandamus be issued in terms of prayer (a) and a writ of certiorari be issued in terms of prayer (b) of the writ application. I direct the Respondent to hand over possession of the disputed premises to the Petitioners forthwith.

11. The existence of this order, however, will not prevent the State Respondents from initiating an appropriate proceeding in compliance with the statutory requirements and proceed with the same according to law and upon appropriate notices on the Petitioners.

12. In the facts of the present case as mentioned hereinabove, I propose to impose a cost of 30 gms. against each set of the Respondents.

13. Let xerox copies of this order be delivered to the learned Advocates for the parties on their usual undertakings to apply for and obtain urgent certified copies. Let the Respondents' records produced before me be returned to their learned Advocates.