

**(1993) 09 CAL CK 0019**  
**In the Calcutta High Court**  
**Case No : F.M.A.T. 462 of 1988**

|                                   |    |            |
|-----------------------------------|----|------------|
| Sanat Kumar Mukherjee and another | Vs | APPELLANT  |
| State of West Bengal and another  |    | RESPONDENT |

**Date of Decision :** 20-09-1993

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Urban Land (Ceiling and Regulation) Act, 1976 — Section 2, 26(1), 5(3)

**Citation :** AIR 1994 Cal 139 : (1994) 1 CALLT 146

**Hon'ble Judges :** S.C. Sen, J; R. Bhattacharyya, J

**Bench :** Division Bench

**Advocate :** Mr. Amitava Lala and Mr. D.K. Ray Chowdhury, for the Appellant; Mr. Ram Dulal Manna, for the Respondent

## Judgement

R. Bhattacharyya, J.—This Appeal is directed against the judgment dated 18th of January, 1988, passed by his Lordship the Hon'ble Mr. Justice Shamsuddin Ahmed on an application under Article 226 of the Constitution of India, 1950.

2. To understand the contentions, a few antecedent facts need be stated.

3. The uncontroverted facts of the case are that the appellants although two different recipients came by the properties by two separate deeds of even date consisting of Dag Nos. 3134 and 3141 respectively appertaining to two Khatians of Mouza Behala of Dist. 24-pgs. The steps preceding to mandatory provisions as engraved u/s 26(1) of the Urban Land (Ceiling and Regulation) Act, 1976 for registration were duly obeyed and fulfilled. It is notorious from the twin deeds that Dag No. 3130 is a Tank comprising an area of three Cottahas, the nature and character did not undergo any change while Dag No. 3141 is a Dungal land comprising an area of five Cottahas & 14 Chittaks of land. It is needless to repeat that the names of the purchasers were duly mutated followed by payment of rent without raising any figner of protest. But to the utter dismay of the appellants, the competent Authority and Settlement Officer by a Memo Bearing No. 1111/7/ URL dated 15-7-1983, declared all the transfers as void as the permission u/s

26(1) of the Act, according to the Authority was pre-eminently pivoted on fraud and forgery. The appellants to redress their grievances sought for a mandamus before the Court of the first instance through an application under Article 226 of the Constitution of India, which did not register any success when this Appeal.

4. The Court of the 1st instance arrived at a conclusion that the transfer since offended the provisions of Section 5(3) of the Act could not constitute legality nor the transfers are immuned.

5. The Id. Counsel appearing for the appellants has laboriously researched in his argument that the recipients of the deeds dated 26th of Sept., 1980 are bona fide purchasers for value on the expiry of the life of the notice given u/s 26(1) of the Act. But this contention has to be considered in the perspective of Section 5(3), Section 10 & Section 26(1) of the Act by which the transactions are governed. Section 5(3) puts a ban on transfer of any land by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement u/s 6 and the notification regarding the excess vacant land held by him has been published u/s 26(1) and Section 10; and any such transfer made in contravention of this provision shall be deemed to be null and void.

6. Section 5(3), therefore, cannot be read in isolation of Section 26(1) of the Act, as the prerequisite condition of notice before transfer vacant land in a sine qua non. May be the life of the notice expired for the efflux of time; but if the fabric of notice is stricken with fraud subsequently detected, discovered and came to light, law is not so illogical that with the passage of time it attaches gilt edged title to the transfer of property. It will be apposite to mention that fraud is secret in its origin and the mere registration of the deeds sprang up from fraudulent permission could never confer any title, water and air proof. Therefore, efflux of time followed by registration is not the healing factor to secure the relief. Accordingly, we do not see any force in the contention which is still wide open.

7. The second contention in the row is that the Authority laboured under misconception of law relating to transfer of land within the ceiling limit. Though, the facts are few, yet the law is not obtuse. It does not make any discrimination relating to transfer of land within the ceiling limit.

8. In the background of the above, Section 26(1) is a formidable hurdle in the way of transfer of land unless qualified.

9. Much furore has been raised about Dag No. 3130 which is claimed to be the Tank founded on the record of right, Annexure-"C" to the paper book. A Tank does not come within the mischief of (he Act. It is not a land within the meaning of Section 2(0) and Section 2(q)(i). The competent Authority as canvassed by the Id. Counsel, cannot impose any embargo on the registration as it is not subject any notice. But the bone of controversy has not been set atrest as the issue is pending decision before the appex court about which the competent Authority is emphatic. The Id. Counsel for the appellants, however, could not dispute the same as agitated in Annexure "E". In the light of the above, it will

not be safe to make any inflated or deflated remark at this stage. Notwithstanding the aforesaid contentions, the appellants are very much vocal even before the initiation of the writ proceedings that the decision of the competent Authority manifestly suffers from arbitrariness by the reason of exclusion of audi alterant partem rule.

10. In developing the contention, the Id. Counsel has rigorously contended that the cancellation of the impugned deeds is an unilateral action blended with arbitrariness where principle of natural justice has been sacrificed at the alter of administrative justice. The competent Authority, as contended cannot play fast and loose with a party over a valuable right.

11. In adjudging the merit of the contention, it has been established more often than not by the Courts of our country that the concept of natural justice by the reason of its elasticity is not only aimed at to restrict the arbitrary action but also its expansion to other field, the object being to attain the rule of law.

12. To translate the action into letter, it must not be divorced from fairness. It should be applied by the courts readily and steadily to prevent miscarriage of justice.

13. We should not be unmindful that the case at hand cannot be placed in a category where natural justice before taking action effecting valuable could be excluded. The Writ court is not a substitute of the competent authority which could decide the factual premises of the case dwelling on fraud and forgery. It appears from the Annexure "E" that fraud and forgery are sought to have been made as capital to knock down the deeds. In our view, it is a disputed question of fact for which a Writ court will refrain from deciding the same. The Writ Court could decide the disputed question of facts about which there lies no ambiguity nor any obscurity. Besides, the appellants when aggrieved of denial a of opportunity of being heard before cancellation of deeds by the competent authority which ventilated its grievance of forgery and fraudulent act in achieving the registration of deeds, the appellants, in our view, will not be deprived of an opportunity to substantiate their claim before the competent Authority in accordance with law.

14. For the reasons indicated above, the approach of the appellants is premature in writ proceedings, in the background of which the judgment impugned is untenable in the eye of law.

15. Persuaded by the aforementioned reasons, the parties are hereby given the liberty to approach the competent Authority for a just decision of the case in accordance with the provision of law. We make it clear that we have not decided the case on merit. We also direct and make it clear that the competent Authority is to afford an opportunity of hearing after notice to the parties where the parties shall be at liberty to adduce evidence both oral and documentary to substantiate their claim and the competent Authority shall dispose of the case with a speaking order.

16. The appeal is accordingly disposed of with the above observations.

17. We make it clear that we have not finally decided any question of fact and law, which are left open to be decided by the statutory authority. We have merely held that at this stage the writ petition was premature. All questions of fact and law including the questions of fraud and forgery are left open to be agitated and decided in accordance with law. We also direct that the competent authority will entertain any application or appeal preferred by the appellant without any question of limitation if such application or appeal is filed within a period of sixty days from date.

18. The competent authority will dispose of the issue involved in this case within three months from the date of receipt of the application after notice to the parties.

19. Let xerox copies of the operative part of this judgment be handed over to the learned Advocates for the parties on usual undertaking.

S.C. Sen. J.

20. I agree.

21. Order accordingly.