
(2017) 03 CAL CK 0027
In the Calcutta High Court
Case No : 9043 (W) of 2016

Santoshpur Udbastu Unnayan Samity APPELLANT
Vs
The State of West Bengal & Ors. RESPONDENT

Date of Decision : 10-03-2017

Acts Referred:

West Bengal Societies Registration Act, 1961, Section 8 -
Land Acquisition Act of 1984, Section 10 1984

Citation : (2017) 03 CAL CK 0027

Hon'ble Judges : Nishita Mhatre, Tapabrata Chakraborty

Bench : DIVISION BENCH

Advocate : Haradhan Banerjee, Asit Kumar Bhattacharyya, Abhratosh Majumder, Tulsidas Roy, Kashi Kanta Moitra, Achintya Kr. Banerjee, Raghunath Chakraborty, Jayanta Narayan Mahanty

Judgement

1. Santoshpur Udbastu Unnayan Samity, a society registered under the West Bengal Societies Registration Act, 1961 has preferred the instant writ petition by way of a Public Interest Litigation, inter alia, praying for a direction upon the State respondents to take necessary legal steps and to restrain the Chairman of the Maheshtala Municipality (hereinafter referred to as the said Municipality) from altering the nature and character of a plot of land comprising of an area of 6 cottahs situated at L.O.P. No.494/622 at Ward No.16 (hereinafter referred to as the said plot) and from constructing any community hall over the said plot which is being used as a children's park.

2. Mr. Haradhan Banerjee, learned advocate appearing for the petitioner submits that since 1982 the said plot is being utilised as a children's park. Till the year 2015 there was no dispute pertaining to such user of the said plot. Suddenly on 16th October, 2015 authorities of the said Municipality laid the foundation stone for a community hall on the said plot though prior thereto, in the year 1994, the respondent no. 4 inaugurated a children's park over the same plot. The respondents thereafter proceeded in hot haste to construct a community hall

upon the said plot. Upon coming to learn about such attempt on the part of the respondents, the petitioner made an application under the Right to Information Act, 2005 seeking information about the nature and character of the said plot and by a letter dated 21st December, 2015 it was, inter alia, intimated as follows :

A. As per available office record the subject plot, i.e., L.O.P. No.494/622 (measuring 6 katha {approximately} has been ear marked as "CHILDREN PARK" in the approved Lay Out Map dt 1982.

B. As mentioned in the Conrit Register the subject plot was used by the children for entertainment.

C. As per the available office record the plot has not yet been gifted/leased out/ transferred/handed over to any person or Govt. Or Non-govt. Organisation.

3. Upon receipt of such information, the petitioner made a representation to the respondent no.1 on 29th December, 2015 and submitted a demand notice on 20th January, 2016 asking the respondents to refrain from altering the nature and character of the said plot but the same were not responded to and as such the petitioner was constrained to file the instant writ petition in the month of May, 2016.

4. He further submits that in the lay out map/land use map of a development scheme and also in the Register maintained by the competent authority, the said plot stands ear marked as a children's park since the year 1982. The provisions of the West Bengal Town and Country (Planning and Development) Act, 1979 (hereinafter referred to as the said Act of 1979) are applicable to the said plot and without effecting any revision in the said lay out map and without modification of the map and the development scheme, the Refugee, Relief and Rehabilitation Department (hereinafter referred to as R.R. Department) could not have transferred the said land to any other department of the Government and could not have allowed any authority to alter the nature and character of the said land and to construct any community hall upon the said plot. The user of the land is to be decided by the authority empowered to take such a decision in terms of the statutory provisions but in the instant case the rigors of the statute had been sought to be avoided by the respondents. In support of such contention reliance has been placed upon the judgments delivered in the case of Arunangshu Chakraborty -vs- Bidhannagar Municipality, reported in 2013(4) CHN (CAL) 603, in the case of R.K. Mittal and Others -vs- State of Uttar Pradesh and Others, reported in (2012) 2 SCC 232 and in the case of Manohar Joshi -vs- State of Maharashtra and Others, reported in (2012) 3 SCC 619.

5. He further submits that being, prima facie, satisfied about the grievance of the petitioner, this Court by an order dated 20th May, 2016 appointed a learned advocate as the Advocate Commissioner to order dated 20-5-16 to "inspect and report how big a community hall is being put up in the children's park and once this community hall is completed whether there will be any place for the children

to play or not. He should also verify and see whether putting up of community hall itself would become hindrance to the children to use the park for their play". Pursuant to such direction a report was filed but in the same it was not pointed out whether upon construction of the community hall on the said plot any space would be left for the children to play. In fact, the site plan annexed to the affidavit-inopposition filled by the respondent no. 4 would reveal that upon construction of the community hall on the said plot, no space would be left for the children to play. The Advocate Commissioner had not answered the queries of the Court properly.

6. Mr. Moitra, learned senior advocate appearing for the respondent no.4 denies the contention of the petitioner and submits that the said plot was never used as a children's park and the same was all along vacant. The said plot belonged to the R.R. Department and the said Department, on the basis of the development scheme, relinquished the said plot of land in favour of the Land and Land Reforms Department for subsequent transfer thereof to the Municipal Affairs Department for setting up a community hall thereat. In appreciation of the necessity of a community hall in the locality, the proposal of the Municipality was approved by the competent authority and the estimate for construction of the community hall was also sanctioned.

7. Placing reliance upon the report of the Advocate Commissioner, Mr. Moitra submits that there are three children parks in the locality along with a big play ground adjacent to the said plot and as such there is no necessity towards any further park in the said plot. The entire pleadings in the writ petition are founded on a personal grievance and the matter has been sought to be camouflaged as a Public Interest Litigation. The only intent and purpose towards preference of the present writ petition is to frustrate the development activities of the respondents for a public purpose.

8. Mr. Majumder, learned advocate appearing for the State respondents submits that the authorities of the said Municipality approached the R.R. Department to allow construction of a community hall over the said plot for the use of the local residents. In response to such prayer the said authorities were requested to submit a proposal for infrastructure development scheme in the R.R. colonies under the said Municipality for preparation of a comprehensive proposal for the entire district. Pursuant thereto, a formal proposal was filed and upon consideration of the same, the R.R. Department relinquished the said plot of land in favour of the Land and Land Reforms Department for subsequent transfer thereto to the Municipal Affairs department for setting up a community hall thereat, as would be explicit from the memorandum dated 25th February, 2016 issued by the Commissioner-in-Department, R.R. Department. In the midst thereof and referring to a letter dated 25th January, 2016 addressed to the Deputy R.R. Commissioner, an estimated cost pertaining to various schemes including construction of a community hall in the said plot was submitted by the respondent no.4 to the Additional District Magistrate, (RR). By a letter dated

23rd February, 2016 the same was forwarded by the District Magistrate to the Principal Secretary to the Government of R.R. Department by a memorandum dated 23rd February, 2016.

9. Placing reliance upon a memorandum dated 3rd March, 2016 issued by the Commissioner-in-Department, R.R. Department, he further submits that administrative approval and financial sanction pertaining to the estimated cost has already been approved to be utilised and in the event steps are not taken towards completion of the development works, the financial sanction would cease.

10. He further argues that the provisions of the said Act of 1979 have no manner of application in the instant case and that the infrastructural development scheme pertaining to Santoshpur Scheme (Urban)-Part-II was revised and sanctioned in strict consonance with executive instructions issued and the provisions of the West Bengal Land Development and Planning Act, 1948 (hereinafter referred to as the said Act of 1948) and only after effecting such revision, steps were taken to grant administrative and financial sanction towards construction of a community hall over the said plot. In the interest of the public at large the State authorities are empowered under the said Act of 1948 to undertake development activities for a public purpose through issuance of executive instructions. In support of the arguments reliance has been placed upon judgments delivered in the case of *Collectors of 24 Parganas and Others - vs- Lalit Mohan Mullick and Others*, reported in (1986) 2 SCC 138 and in the case of *MIG Cricket Club -vs- Abhinav Sahakar Education Society and Others*, reported in (2011) 9 SCC 97.

11. In reply, Mr. Banerjee has drawn the attention of this Court to a lay out plan in which the plot no.494/622 has been classified as a children's park. Placing reliance upon the same, he submits that without alteration or modification of the said lay out plan and without notifying any development scheme, the respondents are debarred under the provisions of the said Act of 1979 to change the nature and character of the said plot and to construct a community hall over a children's park.

12. Heard the learned advocates appearing for the respective parties and considered the materials on record. For proper adjudication of the matter, the following dates would be relevant : a) 16th October, 2015 - Foundation stone was laid for the community hall on the said plot at Santoshpur government colony;

b) 26th November, 2015 - Letter issued by the District Magistrate, South 24 Parganas requesting the Chairman of the said Municipality and others including Sabhadhipati of the Zilla Parishad, the Member of Parliament of the constituency and the Member of Legislative Assembly of the constituency to submit proposal for infrastructure development scheme in the R.R. colonies for preparation of a comprehensive proposal for the entire District;

c) 21st December, 2015 - Letter issued by the District Rehabilitation Officer, R.R.

Department to the Secretary of the petitioner indicating, inter alia, that as per available office record L.O.P. No.494/622 has been ear marked as a children's park in the approved lay out map of 1982;

d) 29th December, 2015 - Representation made by the petitioner;

e) 20th January, 2016 - Notice issued by the petitioner through its learned advocate;

f) 25th January, 2016 - Letter addressed by the Additional District Magistrate (R.R.) to the Deputy R.R. Commissioner;

g) 23rd February, 2016 - Estimate for overall development works in R.R. colonies under the said Municipality issued to the Additional District Magistrate (R.R.) by the respondent no.4;

h) 23rd February, 2016 - Letter issued by the District Magistrate, South 24 Parganas requesting the Principal Secretary, R.R. Department for approval and sanction of the estimate for infrastructure development fund for the Santoshpur G.S. scheme;

i) 25th February, 2016 - Letter issued by the Commissioner-in- Department, R.R. Department to the Land Reforms Commissioner relinquishing the said plot in favour of L & LR Department for subsequent transfer thereof to the Municipal Affairs Department for setting up community hall thereat;

j) 3rd March, 2016 - Letter issued by the Commissioner in R.R. Department to the Treasury Officer, Alipore-I intimating that Governor has granted administrative approval and financial sanction for implementation of the infrastructural development work of an amount of Rs.4,11,72,752/- out of a fund provided by State Government during the fiscal 2015- 16;

k) 11th March, 2016 - Letter issued by the Chairman of the said Municipality to the Additional District Magistrate (R.R.), South 24 Parganas requesting him to transfer the sanctioned fund in the bank account of the said Municipality.

13. From the aforesaid facts it is clear that the said plot which was ear marked as a children's park in the lay out map of 1982 had been sought to be utilised for construction of a community hall after more than 33 years and that too without modifying the lay out plan/map and the development scheme. The fact that the said plot was ear marked as a children's park in the lay out map of 1982 would be explicit from the map annexed to the exception filed by the petitioner to the report of the Advocate Commissioner. A scrutiny of the lay out map further reveals that it has been prepared in the year 1982 upon conducting a survey and the said revised lay out plan also contains the signatures of the Sub-Divisional Officer, Alipore, Additional District Magistrate, R.R. Commissioner. No document has been produced on behalf of the respondents to establish that there has been a revision of the lay out map/plan and that the classification of the said plot has been altered by the competent authority.

14. The plot was relinquished on 25th February, 2016 in favour of L & LR Department for subsequent transfer thereof to the Municipal Affairs Department for setting up a community hall and even prior to such relinquishment, estimate for overall development works in R.R. colonies under the said Municipality including construction of a community hall on the said plot was placed by the said Municipality on 23rd February, 2016 and on the self-same date the said estimate was forwarded to the Principal Secretary, R.R. Department by the District Magistrate, South 24 Parganas for approval and sanction and within ten days thereafter administrative approval and financial sanction was accorded. Such unusual haste on the part of the respondent authorities maligns and vitiates their actions.

15. In the case of Collector of 24 Parganas (Supra) a notification was issued for acquisition of land for re-settlement of the immigrants but subsequently it was ascertained that acquisition was for the purpose of construction of a hospital for crippled children and accordingly the owners from whom the said land was acquired challenged the notification and contended that for the purpose of quantification of compensation, the Land Acquisition Act of 1984 would be applicable and not the said Act of 1948. The said judgment has no manner of application since the lis in the instant case does not pertain to any acquisition or the purpose towards such acquisition. The judgment delivered in the case of MIG Cricket Club (Supra) in fact supports the petitioner's claim inasmuch as in the said judgment it has, inter alia, been observed that issues pertaining to user of land and preparation of a development plan should be left to be decided by the authority empowered to take such a decision and the Court in exercise of its judicial review should not interfere with the same.

16. The said Act of 1948 contemplates acquisition of two distinct classes, namely, (1) when Government had first considered and sanctioned a development scheme under Section 5 and then made a declaration; (2) when notification is made without any development scheme being prepared and sanctioned under Section 5. The said Act also provides that every person interested in any land within a notified area may object to the acquisition of land and an obligation is cast upon the collector to hear such objection. Section 8 of the said Act provides for application for the provisions of the Land Acquisition Act, 1984 towards compensation and Section 10 thereafter provides for execution of the development scheme and disposal of the land acquired.

17. It is true that the Act of 1948 has not been repealed by the Act of 1979 and that as such the provisions of both the Acts co-exist and are not mutually exclusive. To cite an instance, the West Bengal Land Reforms Act, 1955 also co-exists with the said Act of 1979 and that as such when the competent authority under the said Act of 1955 accords permission for conversion of land, such order is stated to be subject to the provisions of the said Act of 1979. No rule framed under the said Act of 1948 towards execution of the development scheme and disposal of land has been brought to the notice of the Court whereas under the

said Act of 1979 a detailed procedure has been provided towards preparation and execution of development schemes. In the map of the year 1953 produced by Mr. Majumder and in the map of the year 1982 produced by the petitioners, the schedule of C.S. plots is identical and from both the maps it is explicit that the said land was acquired by notifications dated 27th December, 1954, 4th January, 1955 and 25th June, 1956. However, the schedule of lay out plots differs in the said maps. In the latter map, prepared after the said Act of 1979 came into effect, the plot no.494/622 is clearly ear marked as a children's park. No document has been brought to the notice of the Court that such classification has been altered. The authorities of the Maheshtala Municipality submitted proposal for infrastructure development scheme in the year 2015 and such proposal could not have been approved and accepted by the R.R. Department without scrutinising the acceptability of the said scheme in consonance with the provisions of the said Act of 1979.

18. The said Act of 1979 extends to the whole of West Bengal, excluding any area to which the provisions of the Cantonments Act, 1924 applies and thus the land within the Santoshpur Scheme (Urban)-Part-II comes under the purview of the said Act. The provisions of the said Act mandatorily provide for preparation of present Land use map and Land Register, publication of a public notice inviting objections and consideration of objections filed upon granting an opportunity of hearing prior to modification, amendment, changes and annulments of such Land use map and development control plan of the same. The Act also mandates publication of a notice in official gazette upon final approval. The procedure as prescribed under the said Act of 1979 has not been adhered to and the authorities have sought to change the nature and character of the plot without effecting necessary correction in the lay out map upon inviting objections by a public notice and upon granting an opportunity of hearing to the persons objecting against such alteration or modification of the development scheme pertaining to Santoshpur Scheme (Urban)-Part-II.

19. It is a settled principle of law that a natural person has the capacity to do all lawful things unless his capacity has been curtailed by some rule of law. It is equally a fundamental principle that in case of a statutory authority, it is just the other way. The authority has no power to do anything unless those powers are conferred on it by the statutes, which creates it. Reference may be made to the decision of Asian Leather Limited -vs- K.M.C. reported in 2007 (3) CHN 476. Strict adherence to the rule of law is to be ensured and the same cannot be allowed to be flouted in the hands of the executives who dressed in little brief authority and in exercise of its discretion cripples the constitutional guarantee of fairness and reasonableness.

20. Applying such proposition of law to the facts of the instant case we are of the opinion that the nature and character of the plot being L.O.P. No.494/622 which stands recorded as a children's park in the lay out map of the Refugee, Relief and Rehabilitation Department of the Government of West Bengal cannot be

altered and no permission can be granted for construction of a community hall upon the said plot without alteration of classification of the plot in strict consonance with the statutory provisions.

21. With the above observations and directions the writ application is disposed of.

22. In view of disposal of the writ petition, the connected applications have become infructuous and the same are accordingly dismissed. There shall, however, be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.