

(2015) 05 CAL CK 0091

In the Calcutta High Court

Case No : Writ Petition L.R.T. Nos. 20 and 41 of 2015 and C.A.N. No. 3844 of 2015

Sita Devi Agarwala and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 13-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226

West Bengal Estates Acquisition Act, 1953 — Section 44(2)A, 6(3)

Citation : (2015) 2 CALLT 530

Hon'ble Judges : Tapen Sen, J; Siddhartha Chattopadhyay, J

Bench : Division Bench

Advocate : Prabal Kr. Mukherjee, Senior Advocate, Nilanjan Bhattacharya, Dipanjan Sirtha Roy, Sanjay Karar and Debarati Bhattacharya, for the Appellant; Lalit Mohan Mahata, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. Heard Mr. Prabal Kumar Mukherjee, learned Senior Counsel appearing for the Petitioner in W.P.L.R.T. 20 of 2015; Mr. Lalit Mohan Mahata, learned Counsel appearing for the State-Respondents; Mr. Prosit Deb appears for the Petitioner in W.P.L.R.T. 41 of 2015. For the convenience of all parties and by consent of the learned lawyers appearing for them, we have decided to take up both the Writ Petitions together and dispose them of by this common Order.

2. In W.P.L.R.T. 20 of 2015, the Petitioner, Smt. Sita Devi Agarwala has challenged a direction dated 03.02.2015 passed by the learned West Bengal Land Reforms and Tenancy Tribunal in O.A. 340 of 2015 (LRTT) along with the Memo dated 22.1.2015 issued by the Respondent No. 4 (the Block Land and Land Reforms Officer, Sadar, Paschim Medinipur). By reason of the aforesaid Memo dated 22.1.2015 issued by the Block Land and Land Reforms Officer, the Petitioner was directed to stop all construction activities on plot Nos. 340 and 370, Mouza - Tantigeria, J.L. No. 151 on the ground that the said plot numbers

were involved in a proceeding under section 6(3) of the West Bengal Estates Acquisition Act, 1953 and, therefore, she had no right to create any encumbrances or divert the land for any purposes other than the purpose for which "it was allowed to be retained under section 6(3) of the said Act."

3. In Paragraph 30, the Petitioner has pointed out that she challenged the said Notice by filing O.A. 340 of 2015 (LRTT) on 3.2.2015 and also mentioned the matter for urgent hearing, but the learned Tribunal refused to entertain the prayer and instead directed the matter to be listed in usual course.

4. It is in the background of such recourse having been taken by the learned Tribunal that the Petitioner has rushed to us with an additional prayer that the learned Tribunal should have directed the matter to have been taken up expeditiously.

5. From the facts stated in this Writ Petition, it appears that one Rameswar Lal Agarwala and Satyanarayan Agarwala were joint owners of a property measuring 2.90 acres of land comprised in R.S. Plot Nos. 199, 200, 201, 202, 203, 204, 205, 206, 207, 208 and 241 corresponding to L.R. Plot Nos. 340 and 370, Mouza - Tantigerya, J.L. No. 151 together with buildings and structures constructed thereon.

6. The ownership of these two Agarwalas crystallized finally after various rounds of litigations under section 44(2)A of the West Bengal Estates Acquisition Act, 1953 and these plots of land are now subject-matter of the present lis.

7. The two Agarwalas exercised their rights of ownership and possession over the land in question and their names were duly recorded in the R.S. Record of Rights under Khatian No. 130/1 and 130/2 as "Akrishi Proja" or Non-agricultural Tenant. However, the nature of the land was recorded as "Sree Ram Rice Mill."

8. One Rukmini Devi Agarwala acquired title over the said property from the two Agarwalas mentioned above by reason of a Registered Deed of Sale No. 3369 Dated 26.10.1961. Thereafter, she exercised her right, title and interest and possession on the plot in question, which came under L.R. Khatian No. 719.

9. The said Rukmini Devi Agarwala then executed and registered her last Will and Testament in Book III dated 2.4.1986 before the Additional District Sub-Registrar, Midnapore bequeathing the property known as "Sree Ram Rice Mill" in favour of her daughter-in-law, namely, Sita Devi Agarwala being the Petitioner herein, who was also nominated as the Executor of the said Will.

10. After the death of Rukmini Devi Agarwala on 23.1.1992, the Petitioner filed Probate Case No. 121 of 1992 in the capacity of the Executor of the Will of Rukmini Devi Agarwala before the District Delegate at Medinipur, who, after hearing the parties, granted a Probate and a Probate Certificate dated 4.9.1993 was also issued in her favour.

11. As a consequence, the Petitioner herein became the absolute owner of the

said property continuing to exercise her rights, title, interest and possession thereon. Her name was duly mutated vide Mutation Case No. 2817/04 dated 13th December, 2004 and shown as a "Raiyat".

12. In the year 2009, the Petitioner filed an application before the concerned authorities for conversion of the property from "mill" to "commercial vastu". Such a conversion was allowed by the learned D.L. & L.R.O., Paschim Medinipur and Conversion Certificate dated 10.2.2010 was issued to that effect in favour of the Petitioner in respect of 1.4150 acres of land comprised in the said property. The rent of that property was fixed at Rs. 10,613/- by the said D.L. & L.R.O., Paschim Medinipur payable from the date of conversion.

13. The Petitioner has stated that she paid the rent, which was duly accepted by the concerned authorities as would further be evident from copies of the rent receipts, which have been brought on record vide Annexure "E".

14. It has further been stated that the Petitioner paid government rent and municipal tax to the Midnapore Municipality under Municipal Holding No. 782/393 (old) of Ward No. 21, which was duly accepted by the Municipal Authorities.

15. On 29.06.2009, the Midnapore Kharagpur Development Authority (MKDA) issued "Land Use Compatibility Certificate" for construction of residential cum commercial complex on the said property. This will further be evident from the said Certificate brought on record vide Annexure "G".

16. A Building Plan was then submitted before the Medinipur Municipality for sanction and construction of a multi-storeyed housing complex for residential and commercial purposes on the said property. The said building plan was duly sanctioned on 31.7.2010 in the name of the Petitioner and a building permit in Form "C" dated 31.7.2010 was issued in favour of the Petitioner by the Medinipur Municipality.

17. Thereafter, the Petitioner entered into a partnership with one Ankur Lodha, one Santosh Gupta and one Ashesh Sanyal forming the partnership firm under the name and style of "Rukmani Commercial Corporation" for building/promoting and/or constructing multi-storeyed housing complex on the property in question.

18. It is the case of the Petitioner that this partnership firm constructed a multi-storeyed housing complex named as "Sangam Garden". The Petitioner has further stated that at no point of time, any objection was raised by any authority with regard to construction of the said multi-storeyed housing complex. The said multistoreyed housing complex consists of six separate multistoreyed buildings or blocks, common areas and spaces etc. Out of these six blocks, four have been completed and possession was delivered to the respective purchasers of flats situated therein. After construction, the Medinipur Municipality caused an inspection to be made whereafter they found that the construction was in compliance with the sanctioned building plan and the Building Rules framed under the West Bengal Municipal Act, 1993 and accordingly, a Completion

Certificate was issued in respect thereof.

19. Suddenly, a twist was added at the instance of the Officers of the State at this juncture. One Smt. Uma Duari, Wife of Santanu Duari had purchased a residential flat measuring about 820 sq. ft. and she filed an application for mutation. During the pendency thereof being Mutation Case No. 2884/2014, the Block Land and Land Reforms Officer, Medinipur Sadar rejected the mutation case on 14.8.2014 on the plea that the land was a disputed property under section 6(3) of the West Bengal Estates-Acquisition Act. It was, for the first time, that the Petitioner came to learn about such a fact and being aggrieved, she immediately preferred an Appeal being Revenue Appeal No. 75 of 2014 before the D.L. & L.R.O., Paschim Medinipur.

20. The said appeal was taken up by the said D.L. & L.R.O. on 19.2.2015 and it was dismissed confirming the Order of the Block Land and Land Reforms Officer.

21. The other Writ Petition being W.P.L.R.T. 41 of 2015 has been filed by Uma Duari. The sum and substance of her grievances in the said Writ Petition is that she is aggrieved by the action of the authorities in not mutating her name in the Record of Rights. She has also prayed for quashing of an Order dated 5.2.2015 passed by the District Land and Land Reforms Officer, which stood affirmed by the Order passed on 14th August, 2014 by the Block Land and Land Reforms Officer. In the opinion of this Court, Uma Duari should also have challenged the Order passed by the Appellate Authority, but while dispensing justice under Article 226 exercising powers of judicial review, the High Court can suo moto mould the relief even if the Petitioner, due to inadvertence, has not prayed for that particular relief.

22. In the instant case, therefore and in the case of Uma Duari, we consider it to be a fit case under judicial review to scrutinize the Order passed by the Appellate Authority in her case considering the factual background involved in this Writ Petition. It is in the background of such facts that the other Petitioner being Sita Devi Agarwala has stated that when the construction was on the verge of completion, she received the Impugned Notice dated 22.1.2015 asking her to stop all construction work.

23. In view of the aforementioned facts and circumstances that have been narrated in detail above, we can only say and express our anguish at the manner in which the authorities seem to have proceeded against the Petitioner, Sita Devi Agarwala. If it was their case that the matter was governed under the West Bengal Estates Acquisition Act, then it is not at all understandable to this Court as to how they proceeded to give Conversion Certificate and allowed such conversion for residential complex. It is also not understandable as to how the authorities allowed Sita Devi Agarwala and/or the partnership firm to continue with their constructions and even gave a Completion Certificate. The laws of Promissory Estoppel, in the opinion of this Court, would apply in full force. Giving a Certificate of conversion for construction of multi-storeyed buildings and then

sanctioning building plans and allowing construction activities to go on was a sufficient indication of a solemn promise being made to the effect that such construction activity was within the parameters of law. On the basis of issuance of such documents and/or completion certificates and subsequent follow-up positive action in favour of the Petitioner was itself an action that must be termed to be an action, which made the Petitioners and/or the partnership firm to alter its position by spending huge sums of money so as to complete the construction.

24. The laws of Promissory Estoppel has now been advanced by the Hon'ble Supreme Court of India, which has gone to the extent of saying that even a mere promise is not sufficient and on the contrary, if it can only be shown that the aggrieved person has altered his position that should be sufficient to attract the principles of Promissory Estoppel. We, in our wisdom, would apply Promissory Estoppel in this case and we would hold that the Petitioners having been granted the conversion certificate, sanction of building plan, completion certificate were itself factors to show that the Petitioners altered their position not only as innocent citizens of India, but also as persons, who had to gather huge resources for purposes of completing their project.

25. The matter did not end there. When the Petitioners went to the learned Tribunal, their prayer for early hearing was also refused and it is in that helpless condition that these Petitioners have come to us praying equity and justice.

26. It is a well-known concept of law that the doors of equity cannot be kept shut on whatever ground at all. It should open on the first knock of a litigant, who approaches the temple of justice. Therefore, the learned Tribunal ought to have dealt with the matter without refusing the prayer for early hearing.

27. When the matter was being argued before us, a point was taken on behalf of the State that the area allowed for conversion was 1.42 acres, but the Petitioners had actually constructed over 1.72 acres of land, which was beyond the area permitted. In our wisdom therefore, we appointed a Special Officer to make an inspection and file a Report. The Special Officer, Mr. Jaydip Kar, a learned reputed Senior Counsel of this Court, was so appointed and after inspection, he submitted his Report after circulating copies thereof upon each of the parties.

28. On a perusal of the said Report, we must take note of Paragraph 15, which reads as follows:

"15. There cannot be any dispute that the Project is confined to the area shown in the red ink and marked as Sl. No. 1 to 4 and 6, which is completely surrounded by the boundary wall. In fact, all the parties agreed that the sketch map correctly reflects the property and its surroundings. The only difference between the parties are whether the constructions/occupation shown as Sl. No. 5, 7, 8, 9, 10 (portion) and 11 of the sketch should be treated as part of the property under dispute. By a very look at the structures standing, it does not appear to be part of the project where development is taking place. I have since

gone through a copy of the Building Sanction Plan which was supplied by the Learned Advocate for the petitioners and I find that the area shown as Sl. No. 1 to 4 and 6 in the sketch map more or less conforms to the area reflected in the sanctioned building plan handed over by the petitioners" Learned Advocate. The area shown in Sl. No. 5, 7, 8, 9, 10 (portion) and 11 as shown in the sketch map is not reflected in the said Sanctioned Plan. The buildings which have been completed and after which Completion Certificates have been given and the building under construction all stand within the area shown and marked as No. 1 to 4 and 6."

29. Paragraph 15 of the said Report clearly states that the area on which construction has been made is well within the sanctioned area. We cannot allow this matter to linger any further because the Report of the Special Officer is conclusive.

30. We, therefore, hold that the Impugned Notice of the B.L. & L.R.O. dated 22.1.2015 was arbitrary, harassing in nature and malicious. We, accordingly, quash the said Notice dated 22.1.2015. We also, therefore, quash the Order passed by the D.L. & L.R.O. on 19.2.2015 being Rev. Appeal No. 75 of 2014, which is subject matter of W.P.L.R.T. No. 41 of 2015.

31. Against such a malicious and illegal Order, how should an innocent citizen of India be compensated is the other aspect that we must consider and cannot leave unattended. The Petitioners have suffered because of the act of this B.L. & L.R.O. His action in issuing such a notice was totally uncalled for. He has harassed a citizen of India. We are ruled by the Constitution of India and we cannot allow such Officers to go scot-free by harassing people and subjecting them to protracted litigations.

32. We, therefore, direct the District Magistrate of the concerned area to issue a notice to show cause upon the said B.L. & L.R.O. as to why he should not be proceeded against departmentally and if found guilty, as to why he should not be punished in accordance with law.

33. Accordingly, we allow this Writ Petition and as a consequence, we also allow the other Writ Petition. We direct the concerned authorities to mutate the name of the Petitioner at the earliest without any delay at all. Any deviation or disobedience to this Order will be viewed seriously by this Court.

34. After the aforementioned Order was dictated in Court, Mr. Lalit Mohan Mahata, learned Junior Government Advocate, prayed for clemency on behalf of the Block Land and Land Reforms Officer and submitted that the Order is harsh insofar as the said B.L. & L.R.O. is concerned. We are not really convinced by the submissions of Mr. Mahata, but in the facts and circumstances of this case, we take back our direction upon the District Magistrate referred to above, but we warn the said B.L. & L.R.O. to be careful in future while dealing with the citizens of India without forgetting that he is a servant of the public.

35. With the aforesaid observations and directions, both the Writ Petitions stand allowed.

In re: C.A.N. 3844 of 2015

36. As a consequence of this Order, Mr. Prosit Deb, learned Counsel appearing for the Applicant in C.A.N. 3844 of 2015, does not press the application saying that it has now become infructuous. It is, accordingly, dismissed as having become infructuous by reason of this Judgment.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

This Judgment is directed to be made reportable.