

(2003) 03 CAL CK 0014

In the Calcutta High Court

Case No : Writ Petition No. 348 (W) of 2003

Sitala Prasad Jaiswal and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 24-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Urban Land (Ceiling and Regulation) Act, 1976 — Section 6
West Bengal Estates Acquisition Act, 1953 — Section 44
West Bengal Land Reforms Act, 1955 — Section 3, 4B, 4C, 4D

Citation : (2004) 1 CALLT 302

Hon'ble Judges : Dipak Prokash Kundu, J

Bench : Single Bench

Advocate : Aninda Mitra, Abhrajit Mitra, Sakya Sen and Awani Kumar Roy, for the Appellant; Rabilal Moitra, Bharati Mutsuddi, Partha Sarathi Deb Barman and Amlan Kumar Mukherjee for Respondent Municipality, for the Respondent

Judgement

D.P. Kundu, J.—This writ proceeding relates to Holding Nos. 25, 26 and 27, Shyam Nagar Road, being Premises Nos. 39, 39A and 39B, Shyam Nagar Road within the jurisdiction of South Dum Dum Municipality. The writ petitioners are the owners of the aforesaid premises.

2. The writ petitioners stated that there was a factory known as Hindusthan Iron & Steel commonly known as Rod-Kal in the adjacent area of the aforesaid premises. The writ petitioners claim that at the aforesaid premises, there never was a factory in existence or operational. It is the case of the petitioners that the aforesaid factory on the adjacent land of the aforesaid premises had also been shut down in or around the year 1960. The petitioners claim that at all material time the aforesaid premises has been used for residential purpose and even the factory shed was used for residential purpose.

3. On 7th June, 1991 the petitioners submitted a building plan to the South Dum Dum Municipality. By a letter dated 28th November, 1991 issued by the Vice

Chairman, South Dum Dum Municipality the petitioners were directed to rectify the plan submitted by the petitioners following West Bengal Town & Country (Planning and Development) Act, 1979 (hereinafter referred to as the Town & Country planning Act). The petitioners were further directed to submit permission of competent authority under the Urban Land (Ceiling and Regulation) Act, 1-976 (hereinafter referred to as the Urban Land Ceiling Act) for development. The aforesaid letter, dated 28th November, 1991 is set out hereunder:

"No. SDM/6/8/XV.

Office of the Commissioner of South Dum Dum Municipality Nagerbazar, Calcutta-74.

From To Sri Haripada Ghosh, Sri Sitala Prasad Jaiswal & Ors. Vice-Chairman 88, Raja Ram Mohon Street, South Dum Dum Municipality Calcutta Dated: October 24, 1991 28.11.91

Re: Sanction of Plan No. 366 dated 7/6/91 submitted at holding No. 27, Shyamnagar Road Sir,

This is to inform you that you are required to rectify the above mentioned plan following the West Bengal Town & Country (Planning & Development) Act, 1979.

You are also requests to submit the permission of the competent authority of the Urban Land (Ceiling & Regulation) Act, 1976 for development.

This is for your information.

Yours faithfully,

Sd/- Illegible.

Vice-Chairman."

4. Pursuant to the above referred letter the writ petitioners submitted rectified plan as desired by the South Dum Dum Municipality. But the Municipality did not pass any final decision and kept the matter pending.

5. The writ petitioners initiated a writ proceeding being C.O. No. 3733 (W) of 1993 against South Dum Dum Municipal Authorities. The said writ proceeding being C.O. No. 3733 (W) of 1993 was disposed of by Altamas Kabir, J. by an order dated 22.02.1993. The relevant part of the order dated 22.2.1993 passed by Altamas Kabir, J. is set out hereunder:

"The petitioner"s grievance is that despite having complied with all the required formalities and other requisitions made by the South Dum Dum Municipality from time to time and despite having submitted "No objection" certificate from the Competent Authority" under the Urban Land Ceiling Act, 1976, the Municipality is not taking steps to sanction the building plan submitted by the petitioner.

Dr. D.P. Majumdar, learned advocate appearing on behalf of the Municipality,

submits that after the decision of the Division Bench of this Court with regard to submission of no objection certificate under the Urban Land Ceiling Act, the Municipality could have no occasion to call for such no objection certificate. Further more, if the petitioner has complied with all other requisitions, including rectification of the plan in terms of the West Bengal Town and Country (Planning and Development) Act, 1979, there could be no reason for the Municipality to withhold the grant of sanction of such plan.

Having regard to the submissions made on behalf of the respective parties, I dispose of this application with a direction upon the South Dum Dum Municipality to act within a period of 15 days, in accordance with law. Keeping in mind the provisions of Section 319 of the Bengal Municipal Act, 1932."

6. In Barrackpore Case No. DD-197/5245 initiated against the petitioners in the Court of Competent Authority, Barrackpore u/s 6 of Urban Land Ceiling Act the Competent Authority on 12.5.1999 passed an order that the aforesaid Urban Land Ceiling proceeding drawn up in the names of Sitala Prasad Jaiswal and three others was dropped and as such there is no Urban Land Ceiling proceeding in respect of the land held by Sitala Prasad Jaiswal and three others as there is no excess vacant land. The relevant part of the order dated 12.5.1999 passed by the Competent Authority in the aforesaid Urban Land Ceiling Case being Barrackpore Case No. DD-197/5245 is set out hereunder:

"By taking all these together the implication of the judgment and order of the Hon"ble Court passed on 22/12/98 in C.O. No. 575 (W) of 1993 is that U.L.C. proceeding drawn up in the names of Sitalaprasad Jaiswal & three others who are the writ petitioners in the instant case stands dropped and as such there is no U.L.C. proceeding in respect of land held by Sitalaprasad Jaiswal and three others (the writ petitioners) as there is no excess vacant land."

7. However, the petitioners deposited a pay order for Rs. 40,38,745/-issued by the Tamilnadu Mercantile Bank Ltd. with the Chairman, South Dum Dum Municipality as sanction fee of the plan. Even after receiving the aid fee the municipality did not sanction the plan.

8. Thereafter the petitioners initiated another writ proceeding being W.P. No. 14365 (W) of 2002 which was disposed by an order dated 8.10.2002 passed by B. Bhattacharya, J. The relevant part of the order dated 8.10.2002 passed by B. Bhattacharya, J. in W.P. No. 14365 (W) of 2002 is set out hereunder:--

"In this writ application the grievance of the writ petitioners is that although the municipality has sanctioned the plan and has accepted fees for such plan, they are not handing over such plan to the petitioners for making construction.

Mr. Moitra, learned counsel appearing on behalf of the municipality has informed this Court that pursuant to the earlier order in the meeting, of the Board of Councillors held yesterday it has been decided not to approve the proposal sanction.

Under such circumstances, I dispose of this application by directing the municipality to immediately convey the decision of not approving the sanction to the petitioners within one week from date. The municipality will also refund the amount of Rs. 40,38,745/- already taken from the petitioners with interest at the rate of 12% per annum from the date of acceptance of money till the date of refund. Such refund however must be made within one week from date. The municipality will also communicate the decision taken yesterday to the petitioners within one week from date. I make it clear that I have not gone into the propriety of the decision taken by the municipality and the petitioners will be free to challenge such decision, if so advised, before the appropriate forum.

As suggested by Mr. Mitra, appearing on behalf of the petitioners the money taken by the municipality may be refunded to the petitioners by A/C Payee Cheque in the name of the learned advocate on record for the petitioners viz. Abani Kumar Roy.

The writ application is thus disposed of.

The learned advocates for the parties are at liberty to take the gist of the operative part of the order.

There will be, however, no order as to costs."

9. Pursuant to the aforesaid order dated 8.10.02 passed by B. Bhattacharya, J. the South Dum Dum Municipality communicated the copy of the resolutions taken by the Board of Councillors on 7.10.2002 in connection with the building plan submitted by the petitioners, The official translation of the resolutions taken by the Board of Councillors on 7.10.2002 is set out hereunder:--

"Copy of the resolutions taken by the Board of Councillors on 7.10.2002

..... During the beginning of the Board Meeting today on 7.10.2002, the Municipality Chairman said that as during the last Municipal Board meeting (9.9.2002) he proposed to sanction the building plan of Holding No. 27, Shyamnagar Road in the name of Sitala Prasad Jaiswal and others, and as there was no decision regarding that matter, he has requested to reconsider the matter once more.

In this matter, the councillor, Sri Rathin Dutta has said, that the related property is the property of the factory, according to Municipality records. To sanction the plan on the property of the factory, or permission of the related department of the State Government u/s 4B, 4C, 4D of West Bengal Land Acquisition Act.

The matter of the permission of the Urban Land Ceiling and Regulation, Act has to be considered once more. In these circumstances, I do not think that the building plan of the related property cannot be passed. As the entire matter is related to the laws and regulations of the property, so I request to forward this matter to Department of Land and Land Revenue and Industry Department.

Decision: After long discussion and debate it has been decided unanimously that

before sanctioning the plan of the house at holding 27, Shyamnagar Road in the name of Sri Sitala Prasad Jaiswal and others the matter was to be forwarded to the Department of West Bengal Government Land and Land Revenue and Department of Industries for their approval. At present the plan of the construction of the house is not sanctioned."

10. In the present writ proceeding the writ petitioners have challenged the aforesaid resolution taken by the Board of Councillors of South Dum Dum Municipality on 7.10.2002 in respect of the plan submitted by the petitioners. The learned advocate for the petitioners argued the following points.

1. The grounds for which the municipality can refuse to sanction a plan have been laid down by Section 210 of the Bengal Municipal Act, 1993 (hereinafter referred to as B.M. Act) and municipality cannot refuse to sanction a plan on a ground other than those mentioned in aforesaid Section 210.

2. So far the present case is concerned Section 322 of the B.M. Act, 1932 shall apply because the application was made under the Old Act of 1932 and the time for consideration was also fixed by Section 31B of B.M. Act, 1932.

3. The South Dum Dum Municipality has refused to sanction the plan on the grounds which are not permitted even under the new Act, 1993.

4. No sanction fee can be obtained unless there is sanction. As the municipality accepted the sanction fee it goes a long to show that municipality in fact sanction the plan but later on decided to keep the matter pending.

11. Supreme Court in State of W.B. Vs. Terra Firma Investment and Trading Pvt. Ltd., held that the builders do not acquire any legal right in respect of the plans until sanctioned in their favour. Supreme Court relied upon its earlier decision in Usman Gani J. Khatri of Bombay and Others Vs. Cantonment Board and others, wherein it was held by the Supreme Court that the building plans can only be sanctioned according to the building regulations prevailing at the time of sanctioning of such building plans. The relevant lines from paragraph 15 of the reported decision in State of West Bengal v. Terra Firma Investment & Trading Pvt. Ltd. (supra) are set out hereunder:

"This Court in Usman Gani, J. Khatri v. Cantonment Board pointed out that builders do not acquire any legal right in respect of the plans until sanctioned in their favour. It was also said: (SCC p. 468, para 24)

"In any case the High Court is right in taking the view that the building plans can only be sanctioned according to the building regulations prevailing at the time of sanctioning of such building plans. At present the statutory bye-laws published on 30.4.1988 are in force and the fresh building plans to be submitted by the petitioners, if any, shall now be governed by these bye-laws and not by any other bye-laws or schemes which are not longer in force now. If we consider a reverse case where building regulations are amended more favourably to the builders before sanctioning of building plans already submitted, the builders would

certainly claim and get the advantage of the regulations amended to their benefit."

12. That being the law laid down by Supreme Court the contention of the learned advocate for the petitioners that the application for sanction, should have been considered under the Old Act of 1932 cannot be accepted. The building plan submitted by the petitioners can only be sanctioned now under the provisions of B.M. Act, 1993.

13. An affidavit-in-opposition on behalf of the respondent No. 2, the Chairmen, South Dum Dum Municipality affirmed by Shri Sreehir Bhattacharya on 30th January, 2003 has been filed in the present writ proceeding. It appears from sub-paragraphs (a), (b), (d), (f), (g), (h) and (j) of paragraph 4 of the aforesaid affidavit-in-opposition that the case of respondent No. 2 is as follows:

That the premises in question is a factory premises of Jaiswal & Co. which was closed in the year 1968. As a result of the usage of the factory premises, even the factory sheds, other than factory i.e. for residential purpose, one after another factories were closed by their proprietors resulting in severe unemployment in the area. Pursuant to the order dated 22.2.1993 passed by Altamas Kabir, J. in C.O. No. 3733 (W) of 1993 the authorities of South Dum Dum Municipality assessed the sanction fee for Rs. 9,22,000/- but in the meantime the Urban Land Ceiling Authorities published a Newspaper advertisement to the effect that the Land Ceiling proceedings is still pending in respect of the premises in question. And for that reason the Municipal Authority did not accept the sanction fee and asked the petitioners to obtain fresh no objection from the Urban Land Ceiling Authority again. As the premises in question was a factory premises of M/s. Jaiswal & Co. necessary permission is required in terms of Sections 4B, 4C and 4D of the West Bengal Land Reforms Act, 1955. Municipal Authority could not grant sanction of the building plan for the reason that the said premises is a factory premises and necessary permission in terms of Sections 4B, 4C and 4D of the West Bengal Land Reforms Act, 1955 has not been obtained from the Land and Land Reforms Office. In a meeting of the Board of Councillors of South Dum Dum Municipality held on 7.10.2002 the Councillors contended that the said premises had been recorded as factory premises in the records of the municipality and no permission as required was obtained in terms of 4B, 4C and 4D of the West Bengal Land Reforms Act, 1955 from the office of the Land and Land Reforms Office. In the said meeting held on 7.10.2002 the councillors unanimously decided that necessary advice would be sought from the Department of the Land and Land Reforms Office and Department of Industries before granting the sanction of the building plan in the premises in question and at present no sanction of plan can be accorded.

14. At one point of time of the hearing of the matter it was argued that at the time of consideration of building plan for the purpose of sanctions Municipal Authorities cannot take into consideration the provisions of the West Bengal Land Reforms Act, 1955. Due to later development in the case it is not required to

decide the point raised at one point of time during argument. Suffice it to refer to Section 3 of the West Bengal Land Reforms Act, 1955 which reads as follows:

"3. Act to override other laws.--The provisions of this Act shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force or in any custom or usage or contract, express or implied, or agreement or decree or order or decision or award of a Court, Tribunal or other authority."

15. In course of hearing of the matter Shri Rabilal Moitra, learned advocate for respondent No. 2 produced before this Court photo copies of R.S. Khatian No. 513 and 513/1 of Mouza Shyamnagar JL-32/20. Those photo copies have been kept with the record of this case. It appears from the said photo copies that at one point of time Dag No. 794 of Khatian No. 513 was recorded as "Karkhana" but subsequently the said Dag No. 794 of Khatian No. 513 was recorded as "Danga". Thus, it is apparent that so far Dag No. 794 of Khatian No. 513 is concerned there has been a change in the character of the land and a conversion has been made so far the said Dag No. is concerned. But the said change in the character of the land or conversion of the land has not been challenged by any one. It appears from the subsequent document that such change was made u/s 44(2a) of West Bengal Estate Acquisition Act, 1953. Section 44(2a) of the West Bengal Estate Acquisition Act, 1953 is set out hereunder:--

"44. Draft and final publication of the record-of-rights--

(1)(2) (2a) An officer specially empowered by the State Government may, [(on application within nine months, or of his own motion within (fifty years)] from the date of final publication of the record-of- rights or from the date of coming into force of the West Bengal Estates Acquisition (Second Amendment) Ordinance, 1957, whichever is later, revise an entry in the record finally published in accordance with the provisions of Sub-section (2) after giving the persons interested an opportunity of being heard and after recording reasons therefore:

Provided that nothing in the foregoing paragraph shall be deemed to empower such officer to modify or cancel any order passed u/s 5A, while revising any entry:

Provided further that no such officer shall entertain any application under this sub-section or shall of his own motion take steps to revise any entry, if an appeal against an order passed by a Revenue Officer on any objection made under Sub-section (1), has been filed before the commencement of the West Bengal Estates Acquisition (Second Amendment) Ordinance, 1957, before a Tribunal appointed for the purpose of this section, and, notwithstanding anything in this section, any such appeal may continue and be heard and disposed of as if the West Bengal Estates Acquisition (Second Amendment) Ordinance, 1957, had not been promulgated.

(3)

16. In the earlier part of this judgment, I have already recorded that by an order dated 12.5.1999 passed by the Competent Authority in Barrackpore Case No. DD-197/5245 in the Court of Competent Authority. Barrackpore the Urban Land Ceiling recording in respect of land held by Sitala Prasad Jaiswal and three others was dropped as there is no excess vacant land. I have also discussed hereinabove that from the documents produced by the learned advocate for respondent No. 2 it is evident that the character of the land in question has already been changed in the records and now it is recorded as "Danga". Under the circumstances, the land in question can no longer be treated as "Karkhana". Therefore, the building plan submitted by the petitioners requires immediate consideration by the South Dum Dum Municipality and it is no not necessary to have the view or approval of any department of Government of West Bengal.

17. In view of the discussions made hereinabove, I set aside and quash the resolution taken by the Board of Councillors on 7.10.2002 which is under challenge in the present writ proceeding and I direct the respondent Nos. 2, 3 and 4 to consider the building plan submitted by the writ petitioners and take a final decision within six weeks from the date of communication of this order. Such final decision should be supported by reason. The respondent Nos. 2, 3 and 4 are further directed to communicate such final decision including the reasons to the writ petitioners within two weeks from the date of such decision. In these terms, the writ application is disposed of.

Later on

Let the xerox certified copy, if applied for, be made available the parties forthwith on usual undertaking.