
(2008) 06 CAL CK 0033
In the Calcutta High Court
Case No : A.S.T. 103 of 2008

Smt. Roma Bose and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-06-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(1), 10(3), 33, 6, 6(1)

Citation : (2008) 3 CALLT 77 : (2008) 4 CHN 181 : (2008) 2 ILR (Cal) 1032

Hon'ble Judges : Tapan Mukherjee, J;Pranab Kumar Chattopadhyay, J

Bench : Division Bench

Advocate : Anindya Kumar Mitra, Ashok Banerjee, Amiya Narayan Mukherjee, Aniruddha Roy and S. Bagchi, for the Appellant;Indrajit Sen, Prasenjit Basu and Atarup Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—This appeal is directed against the judgment and order passed by the learned Single Judge whereby and whereunder the said learned Single Judge refused to entertain the writ petition of the appellants herein on the ground of availability of statutory appellate forum and, therefore, dismissed the same.

2. From the records we find that the appellants herein filed the writ petition challenging the validity and/or legality of the declarations issued under various Memos all dated 31st January, 2008 by the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 whereby and whereunder the said competent authority and Sub-Divisional Officer, Sadar Alipore, 24-Parganas (South) in exercise of the powers conferred u/s 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 declared that the excess vacant lands referred to in the notifications published u/s 10(1) of the said Act are to be deemed to have been acquired by the Government of West Bengal. It is also available from the records of this case that pursuant to an earlier order of this court dated 19th

April, 2007 passed in M.A.T. 983 of 2007 with CAN 2610 of 2007 the said competent authority upon hearing the appellants herein passed a reasoned order on 20th November, 2007 rejecting the objections of the appellants against the draft statement.

3. The appellants have also challenged the validity and/or legality of the aforesaid order dated 20th November, 2007 passed by the competent authority and the final statements issued by the said competent authority which were enclosed with the Memos all dated 23rd February, 2007.

4. It appears from the writ petition filed by the appellants herein that challenging the legality and/or validity of the draft statement, final statement and the aforesaid order dated 20th November, 2007 passed by the competent authority, another writ petition bearing W.P. No. 25389 (W) of 2007 was filed on behalf of the appellants before this Hon'ble court which is still pending for final adjudication. It has been submitted on behalf of the appellants that the respondent competent authority pending final adjudication of the aforesaid writ petition bearing W.P. No. 25389 (W) of 2007 issued the Memos all dated 31st January, 2008 declaring that the excess vacant lands referred to in the notifications u/s 10(1) of the Urban Land (Ceiling and Regulations) Act, 1976 are to be deemed to have been acquired by the Government of West Bengal.

5. Mr. Anindya Mitra, learned Senior Counsel representing the appellants herein submits that the respondent competent authority inspite of having specific knowledge with regard to the challenges made by the appellants herein in respect of the draft statement, final statement and the order dated 20th November, 2007 passed by the said competent authority in another writ petition bearing W.P. No. 25389 (W) of 2007 issued the aforesaid declarations u/s 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 with a mala fide intention and ulterior motive. Mr. Mitra upon inviting the attention of this court to the aforesaid Memos all dated 31st January, 2008 issued by the respondent No. 3 submits that the said respondent did not even mention the date from which the lands in question should be deemed to have been acquired by the Government of West Bengal as the relevant portions of the notifications were kept blank.

6. Going through the order dated 20th November, 2007 passed by the competent authority we find that the learned Advocate representing the appellants herein challenged the jurisdiction of the said competent authority to initiate suo motu proceedings. It also appears from the said order of the competent authority dated 20th November, 2007 that the learned Advocate representing the appellants herein raised specific objection to the effect that the lands/plots as included in the draft statement were classified as agricultural in nature and, therefore, the same should not come under the purview of the Urban Land (Ceiling and Regulation) Act, 1976. The competent authority also admitted and specifically mentioned in the aforesaid order that the lands in question have been classified as agricultural lands in the record of rights but ultimately held that the pattern of use of those lands have been changed long before the enactment of

the said Urban Land (Ceiling and Regulation) Act, 1976 pursuant to the informations gathered by him. The relevant extract from the aforesaid order dated 20th November, 2007 passed by the said competent authority is quoted hereunder:

...Presently at the time of hearing Learned Advocate on behalf of the petitioners being appeared on several dates of hearing pointed out the following objections: These are: 1) The Land/Plots included in draft statement were classified as agricultural in nature and thus those land should not come under the purview of the said Act. In this regard I am of the view that those classifications of the land as reflected in the record of rights duly supplied officially from the Land Reforms Authority, actually shows the agricultural nature of those land. Keeping in view of the same I gathered information from the locality of those Plots/Land, that being the part of Kolkata City, the pattern of use of those land had been changed long before the enactment of UL(C&R) Act, 1976. Under such point of view I opined to consider those lands as vacant one....

7. Mr. Anindya Mitra, learned Senior Counsel representing the appellants herein submits that the competent authority never disclosed any information and/or enquiry report wherefrom the knowledge could be derived regarding the changed pattern of the use of the lands in question before the enactment of the Urban Land (Ceiling and Regulation) Act, 1976.

8. In the aforesaid background, we are to examine the validity and/or legality of the declarations made by the competent authority by issuing the Memos all dated 31st January, 2008. The learned Single Judge, however, held that the findings of the competent authority should have been challenged by preferring an appeal before the statutory appellate forum instead of filing the writ petition since according to the said learned Single Judge, it is not the case that the competent authority had no jurisdiction to initiate the proceeding and furthermore, the order was not made by the competent authority in patent violation of the principles of natural justice. The relevant extract from the aforesaid order under appeal passed by the learned Single Judge is set out hereunder:

...The competent authority may be right or he may be wrong, and his order, if is to be challenged, particularly when the findings of fact are questioned, should be challenged by preferring an appeal, and not by invoking the high prerogative discretionary writ jurisdiction of the high court. It is not the case that the competent authority had no jurisdiction to initiate the proceedings. It is not the case that the order was made by the competent authority in patent violation of the principles of natural justice....

9. From the impugned order dated 20th November, 2007 passed by the competent authority we, however, find that the learned Advocate representing the appellants herein specifically urged before the respondent competent authority that there is no provision to draw any suo motu proceeding u/s 6(1) of

the Urban Land (Ceiling and Regulation) Act, 1976.

10. Mr. Anindya Mitra, learned Senior Counsel of the appellants referred to and relied on an unreported decision of this Hon'ble court in the case of Seth Sohan Lal Dugar Memorial Trust v. Competent Authority of Calcutta and Ors. W.P. No. 2496 of 2002 wherein Sengupta, J. has specifically held that the competent authority has no inherent power or any power to take any suo motu action under the aforesaid provision of the Urban Land (Ceiling and Regulation) Act, 1976. In the aforesaid unreported decision, Sengupta, J. held:

Now coming to the question of jurisdiction as I see from the language of the Section that action u/s 8 Sub-section (1) can be initiated only on receipt of the statement filed u/s 6 followed by an enquiry pursuant thereto. Section 6 provides or obliges the holder of the land to file statement. In this case, admittedly, no statement was ever filed. Then on what basis action could be taken? The competent authority has no inherent power or any power to take any suo motu action under the aforesaid provision. He gets jurisdiction only when the statement u/s 6 is filed and not before that....

11. The learned Advocate representing the appellants herein all through questioned the power, authority and jurisdiction of the said competent authority to initiate suo motu proceedings under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 which was unfortunately not decided either by the competent authority namely, the respondent No. 3 herein nor by the learned Single Judge.

12. The learned Single Judge, therefore, in our opinion, was not right in observing that it is not the case that the competent authority had no jurisdiction to initiate the proceeding when no such provision was referred to and/or mentioned in the Urban Land (Ceiling and Regulation) Act, 1976 authorising the said competent authority to initiate any suo motu proceeding as has been done in the present case.

13. Mr. Indrajit Sen, learned Senior Standing Counsel also could not refer to any provision of the Urban Land (Ceiling and Regulation) Act, 1976 which authorises the competent authority to initiate the aforesaid suo motu proceeding.

14. In the aforesaid circumstances, we are constrained to hold that the respondent No. 3 being the competent authority had no jurisdiction to initiate suo motu proceeding under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 as has been done in the instant case.

15. Furthermore, the learned Senior Standing Counsel could not produce any record wherefrom it would appear that the respondent competent authority upon holding a proper enquiry gathered information regarding the change of mode of use of the lands in question before the enactment of the Urban Land (Ceiling and Regulation) Act, 1976 even though the records supplied by the Land Reforms authority specifically classified those lands as agricultural in nature. Without

disclosing any information and/or relevant document and/or enquiry report the respondent competent authority could not arrive at the aforesaid finding regarding the change of mode of the use of the lands in question before the enactment of the Urban Land (Ceiling and Regulation) Act, 1976.

16. In any event, the competent authority cannot hold any enquiry behind the back of the appellants herein. The learned Senior Standing Counsel, however, could not disclose any document with regard to holding of any enquiry by or at the instance of the competent authority for the purpose of ascertaining the actual nature of the lands in question. The vague statement regarding collection of information from the locality by the respondent No. 3 with regard to the alleged change of the mode of use of lands in question cannot be accepted by this Court.

17. We fail to understand why the respondent No. 3 acted in an undue haste. In the event the respondent No. 3 was not satisfied with the records supplied by the Land Reforms authority, the said respondent No. 3 could have conducted the enquiry upon serving prior notice to the appellants herein in order to ascertain when the mode of use of the lands in question has been actually changed.

18. In the present case, unfortunately, proper enquiry was never conducted by the said respondent No. 3 and, therefore, inspite of granting repeated opportunities learned Senior Standing Counsel could not produce any enquiry report before this court although the respondent competent authority proceeded on the basis that the mode of use of the lands in question has been changed long before the enactment of the Urban Land (Ceiling and Regulation) Act, 1976 relying on the alleged informations gathered from the locality.

19. In the aforesaid circumstances, we are constrained to hold that the competent authority proceeded in the matter in flagrant violation of the principles of natural justice as the said competent authority allegedly gathered informations from the locality with regard to the change of mode of use in respect of the lands in question behind the back of the appellants herein and failed to supply any report and/or information and/or documents to the appellants inspite of specific demand made on behalf of the said appellants. The learned Single Judge, in our opinion, should have, therefore, appreciated that the order was made by the competent authority in patent violation of the principles of natural justice and provision of alternative remedy in such circumstances cannot be a specific bar in filing the writ petition.

20. Mr. Mitra, learned Senior Counsel representing the appellants referred to and relied on a decision of this Hon'ble court in the case of Bishnu Kumar Misra v. S.D.O., Howrah and Ors. reported in 1978 CHN 1003 and also the decisions of the Hon'ble Supreme Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, and State of H.P. v. Gujarat Ambuja Cement Ltd. and Anr. reported in (2005) 6 SCC 499 and submits that the learned Single Judge should not have refused to entertain the writ petition on the ground of availability of alternative remedy.

21. In the case of Bishnu Kumar Misra (Supra), Sabyasachi Mukharji, J. (as His Lordship then was) held:

19. ...In that view of the matter as the enquiry report was on an erroneous basis and the permission was refused on misdirection of law, in my opinion, the order of the respondent No. 1 the enquiry report of the respondent No. 2 and the direction of the respondent No. 1 upon the registering authorities are erroneous....

21. ...Appeal in such circumstances as contemplated by Section 33 of the said Act would not have provided any remedy for redress of the injury suffered in this case.

22. In the case of Whirlpool Corporation (Supra), the Hon'ble Supreme Court specifically held as under:

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged....

23. Following the aforesaid decisions and considering the facts of the present case, we are of the opinion that alternative remedy cannot be a bar to entertain the writ petition filed on behalf of the appellants herein. In our view, the High court is not powerless to grant relief under its Constitutional Writ Jurisdiction despite the existence of an alternative remedy. In the instant case, the competent authority, namely, the respondent No. 3 has initiated and conducted the suo motu proceedings although the said competent authority, being an authority under the Statute, has not been vested with any suo motu power under the Urban Land (Ceiling and Regulation) Act, 1976. In the absence of the statutory provision, the exercise of suo motu power by the competent authority is wholly without jurisdiction and any order passed in purported exercise of such power is a nullity in the eye of law.

24. Any person being aggrieved by such order can challenge the same by filing a writ petition before the High Court and need not exhaust the statutory remedy, if any, against such an order which is void ab initio.

25. Mr. Mitra also argued on behalf of the appellants herein that the impugned order dated 20th November, 2007 passed by the respondent No. 3 cannot be said to be an order u/s 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 and, therefore, the final statement and the notifications issued u/s 10(1) of the

said Act are non-est and consequently the subsequent declarations u/s 10(3) of the said Act are void ab initio.

26. We also find merits in the aforesaid submissions. For the reasons discussed hereinbefore, we are of the opinion that the declarations issued by the competent authority under various Memos all dated 31st January, 2008 as well as the order dated 20th November, 2007 passed by the said authority and the final statements issued by the said competent authority, namely, the respondent No. 3 and enclosed with the Memos all dated 23rd February, 2007 cannot be sustained in the eye of law. The same are, therefore, quashed.

27. In the result, the judgment and order under appeal passed by the learned Single Judge are set aside and the appeal is allowed.

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

29. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Tapan Mukherjee, J.

30. I agree.