

(2018) 10 CAL CK 0100

In the Calcutta High Court

Case No : Writ Petition No.No.5092 (W) Of 2018, 28546 (W) Of 2014, 22411 (W) Of 2015, Can 81, 1581 Of 2018

Ural India Limited & Anr @APPELLANT@Hash State of West Bengal & Ors

Date of Decision : 12-10-2018

Acts Referred:

West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 — Section 7
Constitution of India, 1950 — Article 14, 226

Citation : (2018) 10 CAL CK 0100

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Debjani Mitra, Debasish Ghosh, Saptangshu Basu, Chayan Gupta, Swarajit Dey

Final Decision : Dismissed

Judgement

Three writ petitions and an application for extension of interim order are taken up for analogous hearing, as they relate to the same immovable

property. The first petitioner claims to have entered into collaboration with a foreign company for the purpose of assembling vehicles in India.

The first petitioner submitted a project report to set up an automobile unit on 300 acres of land by a letter dated June 22, 2004. The first petitioner was

allotted 200 acres of land for setting up the automobile unit at Haldia. They were, however, given 100 acres initially. On measurement, it was found to

be 98.55 acres of land. A possession certificate was issued to the first petitioner on June 25, 2004. The first petitioner claims that, it complied with the

payments required to be made in terms of the writing dated June 22, 2004. In fact, according to the petitioners, they overpaid.

The State and the respondent no.2 are represented.

It appears from the records made available to Court that, Haldia Development

Authority (in short HDA) by a writing dated September 11, 2014 informed the petitioners that, despite the possession of the land being given on June 25, 2004, the first petitioner could utilize only 3.64 acres. The balance 94.91 acres of land remained unused. It also observed that, the first petitioner was not paying the yearly least rent regularly. Therefore, the Board of HDA decided to cancel the allotment, if the project is not completed within December 31, 2014.

This letter is challenged by the petitioners in the first writ petition being W.P. No.5092 (W) of 2018. According to the petitioners, such writing stands vitiated by unreasonableness and arbitrariness. In support of such contention, reliance is placed on (1991) 1 SCC 212 (Kumari Shrilekha Vidyarthi & Ors. v. State of U.P. & Ors.).

An interim order was passed in the first writ petition on February 19, 2015. The interim order was to the effect that, no further effect should be given to the letter dated September 11, 2014. The interim order was limited for a period of eight weeks from February 16, 2015. The interim order expired by efflux of time. Subsequent thereto, the petitioners filed an application for reinstating the interim order. Such application is located as on the day's list.

The second writ petition is the off shoot of the first writ petition. The second writ petition is W.P. No.22411 (W) of 2015.

The authorities invoked the provisions of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962. The same resulted in an order in original dated April 18, 2018. Such order in original is appealable under Section 7 of the Act of 1962. The petitioners did not prefer any appeal.

The petitioners approached the Writ Court by way of a third writ petition being W.P. No.5092 (W) of 2018.

Notwithstanding, the availability of statutory alternative remedy a writ petition is maintainable, if the writ petitioner is able to substantiate that, the impugned order is without jurisdiction, or breaches any fundamental rights of the petitioners or is vitiated by breach of principles of natural justice. The petitioners have chosen not to prefer the statutory appeal. A Writ Court need not convert itself as the first appellate authority, even if, there is no statutory appeal provided. In the present case, however, there is a statutory appeal provided. Therefore, as a Writ Court, I need not re-appreciate the

evidence led before the adjudicating authority to arrive at a different finding on a re-appreciation of such evidence exercising jurisdiction as an appellate authority. Despite the availability of the statutory alternative appeal, the petitioner having chosen to maintain a writ petition, the impugned order is required to be considered on the parameters available for interference under Article 226 of the Constitution of India. The scope of enquiry with regard to the impugned order under Article 226 of the Constitution, in the facts of the present case it is limited, whether the impugned order stands vitiated by breach of principles of natural justice or not.

In the present case, the petitioners contend that, the impugned order stands vitiated by breach of principles of natural justice. In support of the contention that, the impugned order stands vitiated by the principles of natural justice, learned advocate for the petitioners draws the attention of the Court to the opening paragraph of the impugned order. He submits that, a reply to the show-cause was submitted by the petitioners on April 18, 2018 itself. The impugned order was passed on April 18, 2018. The impugned order records that, the authorities filed a rejoinder to the reply of the petitioners. A copy of such rejoinder was not made available to the petitioners. Therefore, there are grounds which he suggests that, the impugned order stands vitiated by breach of principles of natural justice.

The impugned order records the presence of the advocate for the petitioners at the hearing. The fact that the petitioners were represented at the hearing is not denied. It also records that, the authorities filed a written reply to the statement given by the petitioners. The impugned order, however, does not allude to the written reply at all. The show-cause notice and the stand taken by the petitioner with regard thereto were considered. The impugned order contains reasons. The petitioners were heard by the adjudicating authority. It cannot be said that, the impugned order stands vitiated by the breach of principles of natural justice.

So far as the contention of arbitrariness of the authorities in cancelling the allotment is concerned, Kumari Shrilekha Vidyarthi & Ors. (supra) is of the view that, any action of the State which violates Articles 14 of the Constitution can be struck down by a Writ Court irrespective of the question whether any additional right, contractual or statutory, if any, is also available to the aggrieved party. In the facts of the present case, there are

conflicting views on the allotment concerned. The petitioners contend that, they were not allotted the entirety of the land that they wanted. They also

contend that, they have utilized the entirety of the land that they were put in possession of. The view of the authorities is different.

According to them, despite the petitioners being put in possession with 98.55 acres, the petitioners utilized only 3.64 acres. The utilization was for

purposes other than for which the allotment was granted. The balance portion remained unutilized since the petitioners were put in possession in 2004

till 2014. The authorities also give one further opportunity to the petitioners to complete the project. The authorities were, therefore constrained to

cancel the allotment as the petitioner did not utilise the land for which it was granted. As a Writ Court, I am not called upon to substitute the wisdom

of either of the parties before me. The parties are entitled to their respective views. The HDA has taken a particular view on the utilization of the

allotment of land by the petitioners. Such view cannot be said to be arbitrary or unreasonable.

It is the contention of the petitioners that, the adjudicating authority refused to go into the question of utilization of the land concerned. The scope of

enquiry under the Act of 1962 did not require the adjudicating authority to enter into such aspect. Therefore, the adjudicating authority cannot be

faulted for not entering an issue raised by the petitioners in the proceedings under the Act of 1962. It is not a case of the adjudicating authority failing

to exercise jurisdiction vested upon it by law.

In such circumstances, I find no merit in the three writ petitions. W.P. No.28546 (W) of 2014, W.P. No.22411 (W) of 2015 and W.P. No.5092 (W) of

2018 are dismissed. In view of the dismissal of the three writ petitions, the connected applications made in those writ petition being CAN 8120 of 2018

and CAN 1851 of 2018 are also dismissed. The Court is closing for the annual vacation from today. The Court reopens on November 12, 2018. Since,

the writ petitions are dismissed on the last date of the working of the Court before the annual vacation, it would be appropriate to protect the

petitioners in the interregnum.

The authorities will not implement the order of eviction till November 19, 2018. There shall be no order as to costs. Urgent website certified copies of

this order, if applied for, be made available to the parties upon compliance of the

requisite formalities.