

14.10.2020
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MAT 579 of 2020
With
CAN/1/2020
CAN/2/2020

M/s. KOD Developers Ltd. & Anr.
Vs.
The West Bengal Housing Infrastructure
Development Corporation & Ors.

Mr. Mrinal Kanti Das, Ld. Sr. Adv.,
Mr. Subhabrata Das,
Mr. Subhankar Chakraborty,
Mr. Saptarshi Bhattacharjee
... For the Appellants.

Mr. Jishnu Chowdhury,
Mr. Chayan Gupta,
Mr. Sandip Dasgupta,
Mr. Ayan De
... For the Respondent No.2/HIDCO.
Mr. Soumitra Bandyopadhyay,
Mr. Subhasis Bandyopadhyay
... For the Respondents.

Being aggrieved by and dissatisfied with the
impugned order dated 7th August, 2020, passed in WP
5884(W) of 2020, the appellants/writ petitioners
preferred the present appeal along with the stay
application.

Mr. Das, learned senior Advocate appearing for the
appellants/writ petitioners submits that Section 6(b)
read with Section 2(r) and Section 8 of the Land
Reforms and Tenancy Tribunal Act, 1997 has no
manner of application in the present case. He further
refers to Section 2(r) of the said Tenancy Act, 1997.
Section 2(r) is quoted below:

(r) “Specified Act” means:

- (I) the West Bengal Estate Acquisition Act, 1953; or
- (II) the West Bengal Land Reforms Act, 1955; or
- (iia) the West Bengal Restoration of Alienated Land Act, 1973; or
- (III) the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981; or
- (IV) the West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fisherman Act, 1975; or
- (V) (* * *)
- (VI) the West Bengal Premises Tenancy Act, 1997)

(s) “State” means the State of West Bengal;

(t) “Supreme Court” means the Supreme Court of India’

It is further contended by Mr. Das that HIDCO land is not coming under the purview of Section 2(r) which relates to “Specified Act”. Furthermore, it is submitted that the present land is falling within the domain of “West Bengal Town and Country Planning Act”. He also draws the attention of the court to the letter dated 16th July, 2008 issued by the Block Land and Land Reforms, Officer, Rajarhat, North 24 Parganas, wherefrom it reveals that the said land has already been converted from “shali” to “bastu”. Thereafter the appellants/writ petitioners made an application on

30th September, 2019 before the S.P.I.O., HIDCO Bhaban, West Bengal for granting “no objection” in favour of the appellants for development of the said land. Since the authority was sitting tight over the matter, therefore, the appellants/writ petitioners without finding any alternative approached before this Hon’ble court thereby filing the said writ petition for granting “no objection” to the appellants/writ petitioners’ land on the basis of the application dated 30th September, 2019. That writ petition was dismissed by the learned Single Judge thereby holding that the writ petitioners should approach before the West Bengal Land Tribunal instead of filing the writ petition. Being dissatisfied, hence the present appeal.

Mr. Jishnu Chowdhury, learned Advocate appearing for the respondent No.2, HIDCO draws the attention of the court to the order passed on 2nd May, 2001 by the learned Single Bench in one matter thereby directing the parties to maintain “status quo” in respect to the said plot. The relevant portion of the order is quoted below :

“Accordingly, it would be proper for me to direct the authorities concerned not to take any step against the petitioners in respect of the properties in question of the petitioners.

There will be an interim order of status quo as on today will be maintained until further orders.”

He further contends that since the respondent authority has been directed to maintain status quo in respect of the said land until further orders, therefore, the respondent authority is not in a position to entertain the application for granting “no objection” in favour of the appellants.

The submission of Mr. Chowdhury is vehemently opposed by Mr. Das. Mr. Das submits that the said referred order has no manner of application in respect of the writ petitioners/appellants’ land.

Mr. Bandyopadhyay, learned Advocate appearing for the State after adopting the submission as advanced by Mr. Das, submits that the said land is not coming under the purview of Section 2 (r) of the said Tenancy Act, 1997. Therefore, there is no bar to entertain the appellants’ application for granting “no objection” by the HIDCO

Considering the submissions as advanced by the learned Advocate appearing for the parties and after perusing the records and the relevant Sections of the said Act as referred by Mr. Das, we find that the said land is not coming under the purview of specified Act. We also cannot ignore the fact that the said land is fallen under the “Town and Country Planning Act”.

That being the scenario, in our considered view the impugned order dated 7th August, 2020 cannot be

sustained in the eye of law. Accordingly, the impugned order dated 7th August, 2020 is hereby quashed and set aside.

We also find that the appellants/writ petitioners have already submitted an application dated 30th September, 2019 which is pending before the respondent No.2, HIDCO for taking decision. Therefore, considering the above discussion we direct the respondent No.2, The Chairman and Managing Director, West Bengal Housing Infrastructure Development Corporation to consider and take a decision in accordance with law in respect of the appellants/writ petitioners' pending application dated 30th September, 2019 without any further delay but positively within six weeks after giving an opportunity of hearing to the appellants/ writ petitioners or their authorised representative and also the representative of the State and thereafter pass a reasoned order within one week and communicate the same to the parties accordingly.

With these directions, the appeal is disposed of.

Since the appeal is disposed of, consequently the applications being CAN/1/2020, CAN/2/2020 are also disposed of.

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

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Samapti Chatterjee, J.)

(Aniruddha Roy)