

13.07.2022
Court No.1
Item No.48
pk/AP

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

**MAT 14 of 2019
With
CAN 2 of 2019
The State of West Bengal and Ors.
Vs.
Md. Habibar Rahaman Sarkar**

Mr. Bikramaditya Ghosh
Mr. Pretom Das

... For the Appellants/State.

Mr. Jagriti Mishra
Ms. Ananya Bhattacharya
Mr. Subham Gupta
Mr. Debayan Goswami
Mr. Reshab Kumar

... For the Respondent.

The subject matter of challenge is an order dated 22nd January 2019 passed by the learned Single Bench. By the impugned order the Single Bench rejected the States contention that the land in question over which the Office of the BDO, Dinhata, District Cooch Behar is located, has been donated to the State. The State was directed to formally acquire the land.

The relevant facts of the case are that some time in the year 1976 the predecessor of the petitioner is stated to have gifted the said property to the State to house the BDO's Office. In lieu of such gift, the State was required to offer jobs to the members of the petitioner's family. Admittedly, the family members participated in the selection process

but failed. No job eventually came to be given to the family members. The property continued to be occupied by the State.

It appears that the record of rights and the LR records indicate that the State had permissive occupation of the property since 1976. There is mention of an oral gift. No written document is either available or produced by any of the parties.

Mr. Jagriti Mishra, learned counsel appearing for the writ petitioner would place strong reliance on the decision of the Supreme Court in ***Vidya Devi Vs. State of Himachal Pradesh and Ors.*** reported in ***(2020) 2 SCC 569***. The Hon'ble Supreme Court has said that the State cannot forcibly occupy any person's land. The State can obtain private land by applying the principle of eminent domain or by acquiring the said property by due process of law. Each paragraph of the said judgment has been placed by Mr. Mishra to indicate that in the instant case the State has, in fact, appropriated the petitioner's land without due process of law.

It is argued that the concept of private persons gifting land to the State is alien to law. Therefore, according to Mr. Mishra, the learned Single Judge was justified in directing the State to formally acquire the property in terms of the laws of acquisition as prevalent.

This Court has carefully considered the said judgment and also the other cited case of **B.K. Ravichandra & Ors. Vs. Union of India & Ors.** reported in **2020 0 Supreme(SC) 670** being Civil Appeal No.1460 of 2010 decided on 24th November 2020.

Indeed the proposition of the State cannot usurp any private person's land without the due process of law, cannot be disputed.

The right to property may not be a fundamental right but indeed it is a right recognized by the Constitution itself albeit, not under Part III.

In the instant case, there is noticeable distinction in the facts from the **Vidya Devi (supra)** case. There is admittedly permissive occupation by the State of the land in question. There is indication of a gift of such land on condition. As to whether the gift is valid in law or whether the condition was fulfilled or whether gift could be revoked are all matters are required to be decided after a trial by evidence.

The issue cannot be decided in the extraordinary jurisdiction of the Court under Article 226 of the Constitution of India or on affidavit evidence.

It is only upon the occupation by the State being declared per se illegal that the dicta in the

Vidya Devi (supra) decision would apply and come to the aid of the writ petitioner.

This Court is, therefore, of the view that the writ petitioner's remedy is before an appropriate civil forum to establish his rights in respect of the property in question against the State. Such rights may inter alia include any right of eviction, compensation, in any forum whatsoever either by rent, licence fees or occupational charges etc.

The above observations are made only for the purpose of the instant appeal and shall not prejudice any of the rights of the parties that may be preexisting in law.

For the reasons sated hereinabove, the impugned order is set aside.

The appeal is allowed reserving liberty to the writ petitioner to seek remedies as already indicated hereinabove.

In view of the disposal of the appeal, connected applications, if any, shall also stand disposed of.

(Rajasekhar Mantha, J.)

(Ananda Kumar Mukherjee, J.)