

Form No. J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

M.A.T.968 of 2023

**Kolkata Metropolitan Development Authority
Vs.
Tikmani Realtors Private Limited & ors.**

For the appellant : Mr. Sirsanya Bandyopadhyay, Adv.
Mr. Avishek Guha, Adv.
Ms. Akansha Chopra, Adv.

For the Respondent Nos. 1 & 2.: Mr. Reetobroto Kumar Mitra, Adv.
Mr. Rudrajit Sarkar, Adv.
Ms. Mayuri Ghosh, Adv.

Hearing on : 21.08.2023

Judgment on : 21.08.2023

DEBANGSU BASAK, J.:-

1. The appeal is directed against two orders of the learned Single Judge passed in the same writ petition.
2. By the order dated June 17, 2019 passed in C.A.N.3687 of 2019 made in W.P.1051 (W) of 2007, learned Trial Judge, allowed substitution

and directed exchange of immovable properties between the appellant and the respondents.

3. By the impugned order dated March 3, 2020, the learned Trial Judge modified the earlier order dated June 17, 2019. The learned Trial Judge held that there was no difficulty in the exchange as directed. It was also held that, in the event there was an excess of land given to the respondents originally agreed, the respondents shall pay consideration for the excess land.

4. Learned advocate appearing for the appellant submits that, the reliefs granted to the respondents/writ petitioners were beyond the scope and ambit of the writ petition. He draws the attention of the Court to the prayers in the writ petition. He submits that, two applications were made in the pending writ petition. He draws attention of the Court to the first application as also to the second application. He submits that, first application was a combined application for substitution and for other reliefs. The second application was for the purpose of modification of the order dated June 17, 2019 which resulted in the impugned order dated March 5, 2020.

5. Learned advocate appearing for the appellant submits that, the appellant is an authority within the meaning of Article 12 of the Constitution of India. The business of the appellant requires the vetting of the Chief Executive Officer (CEO) of any proposal for exchange of sale of immovable property belonging to the appellant. In the facts of the

present case, firstly, there was no contract between the appellant and the private respondents for exchange of any plot of land. Secondly, such consensus cannot be deduced from the official file perused by the learned Trial Judge. At no point of time did the CEO of the appellant agreed on behalf of the appellant to exchange any land with the respondents. He draws the attention of the Court to the contents of the file perused by the learned Trial Judge. He submits that, no consensus was ever arrived at between the appellant and the respondents with regard to exchange of plots of land. At best, the proposal of the private respondents for exchange of plots of land was explored. No final decision was taken for the purpose of exchange of plots of land. The officials higher than the Law Officer at all material point of time noted, in the files that, valuations were required to be considered and that other modalities should be explored. Therefore, he submits that, at no stage does the file disclose that the appellant accepted any proposal of the private respondents as expounded by the learned Trial Judge in the two impugned orders.

6. Learned advocate appearing for the appellant submits that, the plots in question in which the appellant is in possession was acquired by the State on September 18, 1986 and that possession in respect thereof was made over to the appellant on December 20, 1986. He refers to the documents of possession. He submits that, the appellant is still in possession of the plots concerned.

7. Learned advocate appearing for the respondents submits that, even in the memorandum of appeal and particularly in ground IX thereof the appellant accepted that there was an agreement for exchange. He submits that, it was only the question of consideration. His client is ready and willing to pay the appropriate consideration.

8. Learned advocate appearing for the respondents submits that, the appellant accepted the order dated June 17, 2019 and acted thereon. He refers to the writing dated June 19, 2019, the minutes of the meeting dated June 20, 2019 and July 17, 2019 in support of his contentions and submits that, the appellant and the respondents agreed to the exchange of the plots with the point of consideration being left open to be decided.

9. Learned advocate appearing for the respondents refers to the noting made by the Law Officer in the file on August 17, 2009. He submits that, subsequent thereto, there was a revised proposal at the behest of the respondents which was worked upon by the appellant. He submits that, the appeal should be dismissed.

10. The two orders under challenge were passed on two applications made in a pending writ petition as well as the writ petition. The writ petition was filed in 2007. It was kept pending. An application being C.A.N.3687 of 2019 was filed by the writ petitioner therein which was allowed on June 17, 2019. A subsequent application being C.A.N.9486 of

2019 filed in the disposed of writ petition which was allowed on March 5, 2020 by the other impugned order.

11. The prayers in the writ petition filed by the respondents were as follows:-

- “a. *A writ of or in the nature of Mandamus do issue commanding the respondents and/or their men agents and subordinates to forthwith return possession of the premises no.50/5, Bosepukur Road, P.S. Kasba, Kolkata 700 042 or any part thereof to the petitioner no.1;*
- b. *A writ of or in the nature of Mandamus do issue commanding the respondents and/or their men agents and subordinates to forthwith rebuild the boundary wall around the premises no.50/5, Bosepukur Road, P.S. Kasba, Kolkata – 700 042 or any part thereof which has been demolished on 7th January 2007 by the respondent no.1;*
- c. *A writ of or in the nature of Mandamus do issue commanding the respondents and/or their men agents and subordinates to forthwith to compensate the petitioner no.1 in such manner as this Hon’ble Court may deem fit and proper for the illegal intrusion into the property of the petitioner no.1 by the men agents and subordinates of the respondent nos.1,2 and 7 in respect of premises no.50/5, Bosepukuer Road, P.S. Kasba, Kolkata – 700 042 or any part thereof.*
- d. *A writ of or in the nature of Prohibition do issue prohibiting the respondents and/or their men*

agents and subordinates from desisting to return possession of the premises no.50/5, Bosepukur Road, P.S. Kasba, Kolkata – 700 042 or any part thereof to the petitioner no.1;

- e. *A writ of or in the nature of Prohibition do issue prohibiting the respondents and/or their men agents and subordinates from utilizing the premises no.50/5, Bosepukur Road, P.S. Kasba, Kolkata – 700 042 or any part thereof in any manner or from transferring possession thereof to any third party or from creating any third party interest in respect thereof;*
- f. *A writ of or in the nature of Certiorari do issue commanding the respondents or each of them to forthwith certify and transmit to this Hon'ble Court all records pertaining to illegal taking over of possession of premises no.50/5, Bosepukur Road, P.S. Kasba, Kolkata – 700 042 or any part thereof so that conscionable justice may be done by this Hon'ble Court in quashing the same.*
- g. *Rule NISI in terms of prayers (a) to (f) above;*
- h. *An interim order directing the respondents and/or their men agents and subordinates to forthwith return possession of the premises no.50/5, Bosepukur Road, P.S. Kasba, Kolkata – 700 042 or any part thereof to the petitioner no.1;*
- i. *An interim order directing the respondents and/or their men agents and subordinates to forthwith rebuild the boundary wall around the premises no.50/5, Bosepukur Road, P.S. Kasba, Kolkata –*

700 042 or any part thereof which has been demolished on 7th January 2007 by the respondent no.1;

- j. An interim order directing the respondents and/or their men agents and subordinates to forthwith to compensate the petitioner no.1 in such manner as this Hon'ble Court may deem fit and proper for the illegal intrusion into the property of the petitioner no.1 by the men agents and subordinates of the respondent nos.1,2 and 7 in respect of premises no.50/5, Bosepukur Road, P.S. Kasba, Kolkata – 700 042 or any part thereof
- k. An interim order restraining the respondents and/or their men agents and subordinates from desisting to return possession of the premises no.50/5, Bosepukur Road, P.S. Kasba, Kolkata – 700042 or any part thereof to the petitioner no.1;
- l. An interim order restraining the respondents and/or their men agents and subordinates from utilizing the premises no.50/5, Bosepukur Road, P.S. Kasba, Kolkata – 700 042 or any part thereof in any manner or from transferring possession thereof to any third party or from creating any third party interest in respect thereof;
- m. Ad interim order in terms of prayer (h) to (l) above;
- n. Such further or other orders as this Hon'ble Court may deem fit and proper;”

12. The writ petition was pending over a considerable period of time. Thereafter, the respondents/writ petitioners applied by way of C.A.N.3687 of 2019 for the following reliefs:-

- “(a) The names of (i) Kolkata Metropolitan Development Authority, a statutory authority having its office at Unnayan Bhawan, DJ- 11, Sector-II, 3rd Floor, Block- A and 2nd floor & 3rd floor, Block-G, Salt lake, Kolkata- 700 091, (ii) The Chairman, Kolkata Metropolitan Development Authority, working for gain at Unnayan Bhawan, DJ- 11, Sector-II, 3rd Floor, Block- A and 2nd floor & 3rd floor, Block-G, Salt lake, Kolkata- 700 091 be replaced and/or substituted in place and stead of Respondent Nos.1 and 2 in the cause title of the instant writ petition being W.P.No.1051 (W) of 2007 (Tikmani Realtors Private Limited & anr. vs. Kolkata Improvement Trust & ors.);
- (b) The issues canvassed in the instant Application particularly paragraphs 9 to 26 hereinabove be allowed to be canvassed as a part of the instant writ petition at its final hearing;
- (c) The substituted Respondent Nos.1 and 2 be directed to disclose the records pertaining to the

instant purported acquisition relating to C.S.Dag Nos.2115, Mouza – Kasba, J.L.No.13, Khatian No.470, 472 and 938 under KMC Ward No.67, Police Station – Kasba, Kolkata – 700 042 and in particular file no.H-1279 of the legal department of Kolkata Improvement Trust and the order recorded therein dated 10th September, 2008 of the then Officers on Special Duty so that appropriate Orders may be made by this Hon’ble Court on perusing the same;

- (d) Ad Interim Order in terms of prayer (a) above.*
- (e) Such further Order or Orders, Direction or Directions as this Hon’ble Court may deem fit and proper;”*

13. C.A.N.3687 of 2019 along with Writ Petition being W.P.1051 (W) of 2007 were disposed of by the impugned order dated June 17, 2019.

14. By the impugned order dated June 17, 2019, the learned Trial Judge came to a finding that there was a decision taken by the appellant on the basis of the proposal given by the respondents to exchange a strip of land belonging to Kolkata Improvement Trust with that of the respondents in dag no.2115 in order to provide access to the respondents to the rest of the land in such dag number as also to the

land under three dag numbers where no acquisition took place. Learned Trial Judge directed that exchange was to be effected by a deed for a consideration of Rs.19,35,000/- and odd as appearing from the note sheet dated December 17, 2008 based on admissions made by the advocate for the appellant in his letter dated September 8, 2008 on the basis of an undated letter of the appellant Law Officer to its advocate in September 2008 being LO/50 on the basis of a letter dated August 21, 2008 proposing such transaction.

15. We perused all the documents alluded to in the impugned order dated June 17, 2019. We invited the learned advocate for the respondents to demonstrate that there was a binding contract arrived at by the exchange of such documents between the parties for exchange of any strip of land for any consideration.

16. The entire file was produced before Court. We perused the file including the note dated December 17, 2008. In our view, the note dated December 17, 2008 cannot be construed to be a concluded contract between the appellant and the respondents/writ petitioners with regard to exchange of any plots of land. A proposal was made by the private respondents for tiding over the empasse that they were facing in view of their claims that their land was landlocked which was being explored at various levels of the appellant. At no level or at least at the various level was there any decision taken by the appellant that they would exchange any plot of land with the respondents for any consideration or otherwise.

17. We invited the learned advocate for the respondents/writ petitioners to demonstrate from the records made available to the learned trial court that, even subsequent to June 17, 2019, whether, there was any consensus *ad idem* between the parties. Attention of the Court was drawn to a writing dated June 19, 2019, minutes dated June 20, 2019 and another minutes dated July 17, 2019 in this regard by the respondents.

18. We perused the writing dated June 19, 2019 as also the two minutes spoken of. None of the documents, contain any unequivocal acceptance by the appellant for any exchange of plots of land for any consideration or otherwise.

19. At best a Court can direct specific performance of a contract. To do so, amongst others, there must be a contract between the parties to be enforced. In any event, it is not for the Court to rewrite the contract between the parties.

20. The scope of the writ petition will appear from the prayers made in writ petition. The prayers in the two applications which were disposed of by the two impugned orders also speak for themselves.

21. We find that, the reliefs sought in the writ petition by subsequent applications were beyond the scope and ambit of the original writ petition. In any event, no contract for exchange of land was established before the Trial Court.

22. In such circumstances, we set aside the impugned orders dated June 17, 2019 and March 5, 2020. W.P.1051 (W) of 2007 and the two applications filed therein are dismissed.

23. **M.A.T. 968 of 2023** is **allowed** without any order as to costs.

(Debangsu Basak, J.)

24. I agree.

(Md. Shabbar Rashidi, J.)

CHC