

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO 25 OF 2023
IA No. GA 1 of 2023
WPO 1502 of 1995

Orient Paper and Industries Limited & Anr.

Vs.

**State of West Bengal, Through the Secretary, Department of
Land and Land Reforms & Ors.**

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray

For the Appellants : Mr. Siddhartha Banerjee, Adv.
 Mr. Souradeep Banerjee, Adv.
 Ms. Sanjana Sinha, Adv.
 Mr. Mainak Chandra, Adv.

For the Respondent No. 5 : Mr. A.K. Chatterjee, Sr. Adv.
 Mr. Indrajit Dasgupta, Adv.

For the State : Mr. Supratim Dhar, Adv.
 Mr. Paritosh Sinha, Adv.
 Mr. Arindam Mondal, Adv.

Judgment On : 27.09.2023

Apurba Sinha Ray, J. :-**Factual Matrix**

1. The predecessor-in-interest of the Appellant-company became the owner of the occupancy right over the relevant property situate in the Barrackpore Cantonment under the Old Grants Act, 1836 in due compliance of the relevant provisions. Subsequently, the said property was requisitioned under West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 ('the 1947 Act' in short hereinafter) for a limited period but as the appropriate authority did not derequisition even after the expiry of the said period, the predecessor of the appellant initiated writ proceedings being WPO No. 3805 of 1992 challenging the action of the State Respondents in continuing with the possession of the property and in refusing to handover vacant and peaceful possession even after the expiry of the prescribed period of requisition.

2. In the said writ petition as well as in the consequential contempt proceedings the State Respondents were directed to handover peaceful vacant possession of the relevant property to the appellant's predecessor after derequisitioning the same. Subsequently, derequisition order was passed on 10.08.1994 and Additional Superintendent of Police, North 24 Parganas was requested to make over possession of the said premises on 25.11.1994.

3. It is alleged that in spite of having issued and published the order for derequisition, the State Respondents deliberately neglected to deliver vacant and peaceful possession of the said property in favour of the appellant's predecessor. Moreover, it is also alleged that after suppressing the fact of issuance of derequisition order, the State Respondents misled the Court by submitting that they have initiated a process of acquisition of the premises in question and sought sufficient time for completion of the process. Subsequently, the State Respondents represented to the Court they had completed the process of acquisition and accordingly the Hon'ble Court passed an order dated 24.01.1995 holding that the application being WPA No. 3805 of 1992 had become infructuous and hence the same stood withdrawn.

4. Subsequently, the appellant's predecessor-in-interest came to know that the State Respondents issued notice under Section 4 of the Land Acquisition Act, 1894 ('the Act 1894' in short hereinafter) dispensing with the requirement of publication of notice under Section 5A of the Act, by invoking provisions under Section 17(4) of the Act, 1894.

5. In this round of litigation, the present writ petition being WPO 1502 of 1995 was filed by the appellant's predecessor on the ground, inter alia, that the State Respondents had acted arbitrarily by invoking the emergency

provisions though there was no valid or cogent ground to adopt such procedure.

6. In the meantime, the appellant-company stepped into the shoes of its predecessors-in-interest and its name has been duly substituted in the proceedings. During course of the proceeding, on 03.02.2022 the Hon'ble Single Judge directed the State Respondents to come up with a proposal whether they were agreeable to return the land comprised in the said premises to the petitioners on payment of compensation or to purchase the land directly from the writ petitioners at the present market rate. The said order was challenged before the Division Bench but in vain. However, the Learned Single Judge was requested to consider all submissions made by the parties and to take appropriate decision in the matter.

7. After the matter was remanded back to the Learned Single Judge, the respondent no. 5, being the Defence Estates Officer, Kolkata Circle, Government of India, representing the Union of India filed an application in the present writ petition being G.A. No. 4 of 2022, praying for, inter alia, addition of several parties indicated in para 17 of the said application in the array of respondents on certain grounds.

8. After contested hearing, the Learned Single Judge allowed the prayer of the respondent no. 5, and hence this appeal.

Submission from the Bar

9. According to the appellants' learned Counsel, Mr. Siddhartha Banerjee, the factual basis and reliefs sought for in the writ application were not properly considered, and though the presence of Union of India is not necessary in the facts and circumstances of the case, the Learned Single Judge allowed the prayer for addition of parties without considering the fact that the appellants being the writ petitioners have their choice of respondents to be impleaded in the said petition and thereby unnecessarily widened the scope of the writ petition.

10. The appellants further contend that the prayer for addition of parties should have been rejected by the Learned Single Judge since the application was filed more than 27 years after initiation of the writ proceedings, and the reliefs sought for in the writ application, if allowed, would not prejudice the Union of India in any manner.

11. Learned Senior Advocate Mr. Ajay Krishna Chatterjee, appearing for the respondent no. 5 has argued that Union of India's application was under Order I Rule 10(2) of the Civil Code of Procedure, 1908 which envisages the power of the court to add proper and necessary parties and this power of the court is not curtailed by the provision laid down under Order I Rule 3 of the Code. Learned Counsel also pointed out that the presence of Union of India is required for the purpose of proper adjudication and decision in respect of

the issues involved in the writ petition. The prayers made in the writ petition were for delivering possession of a bungalow in favour of the writ petitioner. The Union of India cannot be left out from the present litigation since it is the actual owner of the relevant land and therefore it is a necessary party. Learned Counsel of the Union of India has also drawn the attention of the court to paragraph 15 of the writ petition at page 17, wherein the title of Union of India in respect of the relevant land was under challenge. It is further argued that Union of India was not claiming any compensation in the writ petition by way of counter-claim or otherwise, and therefore, there is no legal and valid reason for objecting to the prayer for addition of parties in the writ proceedings. The Learned Counsel also challenged the maintainability of the present appeal.

12. Learned counsel has also drawn the attention of this court to page no. 23 of the Indenture dated 01.05.1949, order dated 03.02.2022, order dated 17.02.2022 and order dated 07.03.2022.

Legal Basis of Submission:-

13. Learned counsel for the appellants has referred to several case laws in support of his contention. According to him a party is not a proper party if no relief is claimed against him. He cited the decision reported at **(2020) 13 SCC 773 (Gurmit Singh Bhatia Vs. Kiran Kant Robinson & Ors.)**. He has

also relied on the case law reported at **(1992) 2 SCC 524 (Ramesh Hira Chand Kundanmal Vs. Municipal Corporation of Greater Bombay & Ors.)** in support of his submission that a necessary party or proper party is one who must have direct or legal interest in the litigation. Learned Counsel for the appellants has referred to the case law reported at **(2022) 4 SCC 328 (Union of India Vs. Bharati Airtel Limited & Ors.)** to buttress his view that when action of the States or Union Territories are not under challenge by the writ petitioner but a policy decision of the State authority is under challenge, non-impleadment of the State/Union Territory would not be fatal for the writ petitioner. Learned counsel also submitted that if the right of a party is finally decided in an interlocutory order then the same can be treated as judgment, and, therefore, an appeal can be preferred under clause 15 of the Letters Patent. In this present case the Union of India has appeared more than 27 years after the initiation of the litigation and the order allowing them to be impleaded in the writ proceeding has seriously affected the rights of the appellants. In this regard the learned counsel has referred to case laws reported at **(2018) 11 SCC 722 (Life Insurance Corporation of India Vs. Sanjeev Builders Pvt. Ltd. & Ors.)**, **(2006) 5 SCC 399 (Midnapore Peoples' Coop. Bank Limited & Ors. Vs. Chunilal Nanda & Ors.)**, **(1981) 4 SCC 8 (Shah Babulal Khimji Vs. Jayaben D. Kania & Anr.)**. He has also argued that the word 'judgment' should be construed in a broader sense and not in a narrow one. In this regard he has also drawn the attention of this court to the case of **Shah Babulal Khimji (supra)** wherein the Hon'ble Supreme has been pleased to hold that judgment can be of three kinds

namely a final judgment, a preliminary judgment and intermediary or interlocutory judgment.

14. The appellants' counsel has drawn the attention of this court to the case law reported at **(2002) SCC OnLine Cal 77 (P & I Services Pvt. Ltd. Vs. Board of Trustees for the Port of Calcutta & Ors.)** wherein the Hon'ble Division Bench took the broader view of the expression 'judgment' and did not follow the limited meaning given to the said expression in the case of **Suprakash Das Vs. Indian Tea Licensing Committee, reported in 45 CWN 454**. By referring to the decision reported in **(2004) 9 SCC 512 Liverpool and London S.P.& I Association Limited Vs. M.V. Sea Success I & Anr.)**, Learned Counsel for the appellants has submitted that clause 15 of the Letters Patent is not a special statute only in a case where there exist an express prohibition in the matter of maintainability of an intra-court appeal, the same may not be held to be maintainable. But in the event there does not exist any such prohibition and if the order will otherwise be a 'judgment' within the meaning of clause 15 of the Letters Patent, an appeal shall be maintainable. He has also referred to the case reported in **(2005) SCC Online Cal 229 (Lyons Corporate Market Limited & Ors. Vs. Uma Gupta & Ors.)** in support of such contention.

15. Learned counsel for the respondent Union of India, on the other hand, has categorically argued that the question of being affected or prejudiced does not arise since as per the provisions of Order I rule 10 of the Code of

Civil Procedure, the Hon'ble Single Judge thought that Union of India is a proper party. It is also argued that as the relief for delivery of vacant possession was prayed for, the Union of India is entitled to participate in the writ proceedings since its title to the property was denied by the appellants. Learned Counsel has referred to case laws reported at **AIR 2004 Gauhati 73 (Tractor and Firm Equipment Limited, Chennai Vs. Secretary to Government of Assam, Department of Agriculture, Gauhati & Ors.)** and **AIR 2002 Andhra Pradesh 77 (Repaka Bhyravamurthy & Anr. Vs. Muppidi Venkataraju & Ors.)** in support of his contention.

16. In reply, learned counsel for the appellants submitted that Union of India may be the owner of the land but it has no interest in the litigation and therefore is not a necessary party. In this regard learned counsel has referred to case laws reported at **Gurmit Singh Bhatia (Supra), Union of India (Supra) and Ramesh Hirachand Kundanmal (Supra).**

Court's view

17. In so far as the question of maintainability of the appeal is concerned, we are of the view that since by the impugned order the learned Single Judge has finally decided the issue of entitlement of the Union of India to have certain parties added in the writ petition, taking a broader view of the word "judgment", the impugned order qualifies as a judgment within the meaning of Clause 15 of the Letters Patent. After all, a plaintiff/petitioner is the *dominus litis*. He is entitled to decide whom he wants to add as

defendants/respondents. Addition of a party by the Court surely interferes with such right of a person initiating a lis. He may legitimately feel aggrieved if the Court adds to the array of defendants/respondents as the same, inter alia, may tend to enlarge the scope of the concerned legal action. Hence, I hold the appeal to be maintainable.

18. It is true that no relief is claimed in the writ petition against the Union of India and the record further shows that the appellants' predecessor's property was requisitioned under the Act, 1947, in the year 1965 and in spite of expiry of the period for which the requisition was made, the property was not given back to the appellant's predecessor. The writ petition was filed in the year 1992 praying for issuance of relevant writs for delivering vacant possession in favour of the appellant's predecessors, but in vain. During the pendency of such writ petition the Hon'ble Court was moved from the side of the State Respondents to impress upon the Hon'ble Court that the Government was willing to acquire the property and on such prayer being made, the Hon'ble Court allowed the State Respondents to proceed with such proposed acquisition proceeding.

19. Therefore, from the above, it is crystal clear that it is not the appellant's predecessor who prayed for acquisition of land. On the other hand, their initial prayer was for issuance of necessary order for derequisitioning the relevant property and also for getting the vacant, peaceful possession of the same. Therefore, the appellants cannot be said to

have taken any steps for initiation of the acquisition proceedings which were in fact, the outcome of the submission of the state respondents.

20. Subsequently, it is found that vacant possession of the property was not delivered even after passing of order for derequisition and it is also found that acquisition proceeding was started by issuing notice under Section 4 of the Act, 1894 and emergency provision under Section 17(4) of the said Act was invoked and thereafter, the appellant's predecessor filed the present writ application claiming peaceful vacant possession of the property. Therefore, in both the writ petitions essentially the reliefs claimed by the appellants' predecessors were that the possession of land which was requisitioned under the Act, 1947 should be delivered in favour of the appellants. In fact, this litigation has a chequered history. It is an admitted fact that the concerned property was requisitioned from a person who had purchased the occupancy right from its erstwhile owner for valuable consideration after obtaining necessary permission from the Government of India. As the possession of the said property was not returned back to its owner even after the expiry of the period of requisition, the owner of the occupancy rights had certainly the right to pray for necessary relief(s) for getting back the said property and therefore the Union of India cannot be said to have any interest in such reliefs. If the reliefs, as claimed in the writ petition, were limited to the occupancy right of the appellant's predecessor or the appellants itself, there would not have been any problem. But unfortunately it appears that the appellant's predecessor did not assist the Hon'ble Court at the relevant

time, that is, when the acquisition proceeding was ordered to be proceeded with, by disclosing that the appellant's predecessor was not the actual owner of the land in question. Moreover, it is also found that the Learned Single Judge directed the State Respondents on 03.02.2022 to come up with a proposal whether they were agreeable to return the land comprised in the said premises to the petitioners on payment of compensation or to purchase the land directly from the writ petitioners at the present market rate. It appears that at that time also the present appellants did not disclose that they are not the actual owners of the land in question and therefore the State Respondents cannot purchase the land directly from the present appellants at the present market rate or otherwise.

21. In my considered opinion, this non-disclosure of the actual ownership to the land by the present appellants has a serious legal consequence since it goes to show that right, title and interest of the Union of India in respect of such land was being denied indirectly by the present appellants.

22. Moreover, if we go through the pleadings in the writ petition we shall find that the right, title and interest of the Union of India in respect of such land has been specifically denied by the present appellants. It is found from paragraph 15 of the writ petition that the State Respondents in the previous writ proceedings tried to divulge that the appellant's predecessor was not the actual owner of the land by taking such plea in the relevant matters. But the appellants' predecessors denied such statement. For the purpose of proper

understanding, paragraph 15 of the Writ Petition being No. 1502 of 1995 is reproduced herein below:

*“Your petitioners state that from the said application your petitioners found that a prayer had been made therein seeking further six months’ time to acquire the said premises, However, it was conveniently suppressed therein that on 10/11th August, 1994 the Government of West Bengal had de-requisitioned the said premises by a letter dated 24th November 1994. The respondent No.3 (who incidentally was also an Applicant of the said petition) himself had forwarded the said order of de-requisition to the other Applicants, which fixed 25th November 1994 as the date for delivery of the said premises to the owners thereof, that is the petitioners. In furtherance of the said malafide and wrongful motive the Applicants of the said application (which included the said respondents herein) **also deliberately mis-stated therein that the said premises was owned by the Ministry of Defence, Government of India.** This patently false allegation was made in spite of being aware of the fact that if it is a Central Government property, which a Ministry of Defence property is, there is no right, authority or jurisdiction to requisition the same under the 1947 Act. No question of acquisition thereof also could arise under the said Act. It was also conveniently glossed over that the rent compensation under the 1947 Act for requisitioning of the said premises had been and were being tendered by the respondents and the said Superintendent to the petitioners, the landlord of the said premises within the meaning of the 1947 Act.”*

23. Therefore, it goes to show that the appellants’ predecessor specifically denied the right, title and interest of the Union of India in respect of the land in question. When the Union of India’s actual ownership to the land has been specifically denied in a judicial proceeding and the Hon’ble Court was not properly assisted from the side of the present appellants by disclosing the actual ownership to the land, I do think that the Union of India has certainly a right to take part in the relevant proceeding for the purpose of

proper adjudication and therefore it is a proper and necessary party. Even though no relief is claimed against the Union of India, yet, in the factual scenario as depicted above, I do think that the Learned Single Judge has rightly exercised His Lordship's discretion by allowing the prayer of the respondent, Union of India.

24. We do not find any apparent infirmity in the Hon'ble Single Judge's order. The relevant case laws cited by Learned Senior Advocate of the appellant do not apply in this case since in the said case laws the actual ownership of the concerned property was not in dispute in a judicial proceeding.

25. Considering all the aspect, I am constrained to dismiss the appeal but without any order as to costs. The impugned judgment dated 16.01.2023 is hereby affirmed. The connected application is also disposed of.

26. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)