

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPO 1034 of 2010

Dip Chand Development Co. Ltd.
-Vs-
State of West Bengal &Ors.

For the Petitioner: Mr. S. N. Mitra, Sr. Adv.,
 Mr. Suman Dutt, Adv.,
 Mr. Subrata Goswami, Adv.

For the KMDA: Mr. Satyajit Talukdar, Adv.,
 Mr. Avishek Guha, Adv.,
 Ms. Akansha Chopra, Adv.

Heard on: 14 July, 2023.

Judgment on: 1 September, 2023

BIBEK CHAUDHURI, J. : –

1. The petitioner no.1, Dip Chand Development Co. Ltd., is a public limited company registered under the Companies Act, 1956 having its registered office at 87, Lenin Sarani, Kolkata-700013. It is the case of the petitioner that via a registered indenture of conveyance, dated 07.05.1966, entered between the company and one Sri Gour Hari Paul and others, it purchased a tract of land with several structures, buildings, dwelling units along with a tank and jheel, measuring about 25 Bigha 5 Cottahs and 9 Chittaks, situated at premises no. 7 Beerpara Lane, Calcutta. The petitioner bought this land with the intention of accommodating the middle and lower-income groups of people by selling

small plots of land for the purpose of building dwelling houses and developing the said plots of land. The petitioner submitted a development plan with the Calcutta Municipal Corporation for the same on 13.07.1972 and it was sanctioned. Subsequently, on 26.07.1973, the Corporation of Calcutta requested the petitioner to pay a development and security deposit of Rs. 49,130.72, which was paid by the appellant on 05.05.1975. After the completion of such formalities, the petitioner started the development process on the said land. Subsequently, the petitioner entered into several agreements for sale at various dates and received advances for the same, with various purchasers of small plots of land within the large tract of land bought by the petitioner.

2. It is categorically stated by the petitioner that all these agreements of sale for the smaller plots of land took place before the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter "The Act") was enacted. A substantial portion of land was also purchased by the Eastern Railway for the purpose of making an underground Metro Railway Project. After selling all these plots of land, the petitioner was left with a balance of 5 Bighas 7 Cottahs 12 Chittaks and 42 Sq. ft. along with structures and buildings and some dwelling units. The petitioner also states that much before the Act was enacted, a drug and cosmetic industry was functioning in the said premises and the labour force employed in that establishment was settled in several pucca hutments and dwelling units erected on the said premises.

3. On 17.02.1976, the Act came into force and the petitioner accordingly submitted a statement under Section 6(1) of the Act before the Competent Authority appointed under the Act. The petitioner states that before the commencement of the Act, a portion of the land was in unauthorized occupation and some portions of the said land were given on a tenancy basis and these tenants are seeking protection under the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981. The petitioner had given possession of portions of lands and structures erected thereupon to various persons in pursuance of various agreements for sale and the same had been declared under Form 6(1) under the Act. The petitioner has also declared under Form 6(1) that he had constructed a temple and had entered into an agreement of sale given possession of the said land for the purpose of charity.

4. On 29.09.1980, the petitioner received the draft statement which was prepared under Section 8(1) of the Act and the petitioner submitted their objection against the said draft statement. Thereafter, the competent authority, i.e, respondent number 2, fixed a hearing date to which the petitioner sought an adjournment and it is the allegation of the petitioner that the next hearing date by the competent authority was not notified. On 26.05.1986, the petitioner received a notice under Section 10(5) of the Act under which the Competent Authority informed the petitioner to see the Assistant Chief Valuer, Valuation Department, Calcutta Improvement Trust. Thereafter, the petitioner filed a writ petition being No. C.R. 7563 (W) of 1986 challenging the draft statement and the notice dated

26.05.1986 and after hearing the parties on 26.06.1986 the Hon'ble Justice Bhagawati Prasad Banerjee as His Lordship then was, passed an interim order and the said interim order was continuing upto 3 May 2010 restraining the respondents from giving any further effect to the draft statement and notice mentioned above. Thereinafter, the petitioner filed an application being No. C.A.N. 4252 of 2010 for necessary direction upon the Competent Authority Kolkata to reconsider the UL Case No. 6(1)/163/V-4/76 before the Hon'ble Justice Indira Banerjee and while doing so they discovered that the writ petition No. C.R. 7563 of 1986 became dismissed for default by an order dated May 4, 2010, by His Lordship the Hon'ble Justice Debasish Kar Gupta. After this, the petitioner immediately filed an application for restoration of the writ petition and restoration of the interim order the said restoration application CAN No. 5601 of 2010 was filed before the Hon'ble Justice Debasish Kar Gupta but due to change of determination the application was mentioned before the Hon'ble Justice Indira Banerjee but due to some problem the matter could not be listed.

5. On 13.07.2010 the petitioner filed a Revision application under Section 34 of the Act 1976 before the Respondent No. 3, praying for a fresh hearing and fresh inspection. The petitioner argues that the respondent authority violated the provision of the law by not serving the final statement under Section 9 of the Act and that under this provision it is mandatory for the petitioner to get a copy of the final statement so that

the petitioner can get the opportunity to file an appeal under Section 33 of the Act.

6. Next, the learned Advocate contends that in spite of the service of the restoration application upon the respondent authority, the respondent authority taking advantage of the pendency of the restoration application being no. C.A.N. 5601 of 2010 and also by violating all the provisions of the said Act are trying to take possession with the help of the police, without disposing of the application filed under Section 34 pending before respondent no.3. They argue that before taking possession under Section 10(5) of the Act, the respondent Authority should prepare a final statement under Section 9 of the said Act and same has to be served to the petitioner. In February 2009, the respondent authority tried to take possession without any authority of law during the pendency of the interim order by fixing a notice board on the said premises after which the petitioner filed an application before the Hon'ble Court contending that without complying with the provisions of the Act the respondent authority cannot take possession of the land of the petitioner. Under the said facts and circumstances, the petitioner has prayed for the following:

“a) Leave may be granted to dispense with Rule 26 of the writ rules.

b) A writ of and/or a writ in the nature of Mandamus commanding the respondents and each of them, their men, agents and subordinates forthwith stopped and cancel to take possession over the premises no. 7, Beerpara Lane.

c) A writ of and/or a writ in nature of Certiorari commanding the respondents and each of them their men, agents and subordinates to certify and transmit the records relating to the case to this Hon'ble Court for doing conscionable justice by quashing the purported notice under Section 10(5) of the Urban Land (Ceiling & Regulation) Act 1976, which being annexure "P-4" hereto.

d) A writ of and/or a writ in the nature of Prohibition commanding the respondents and each of them, their men, agents and subordinate tofor bear from giving any effect or further effect pursuant to and in furtherance of the purported notice Under Section 10 (5) dated 26 May, 1986 being Annexure "P-4" hereto.

e) Rule NISI in terms of prayers (a), (b) and (c) above.

f) Direction upon the respondent no. 2 to rehear the UL Case No. 6(1)/163/V-4/76 after giving fresh enquiry of the premises.

g) Injunction restraining the respondents and each of them their men, agents and Subordinates from giving any effect and/or further effect from taking any steps and/or further steps pursuant to and in furtherance of the purported notice dated 26th May, 1986 prepared under Section 10(5) of Urban Land/Ceiling & Regulation) Act 1976 till disposal of the petition and/or the respondents Authorities restraining by an order of Injunction to take possession over the premises Kolkata. no. 7, Beerpara Lane,

h) Ad interim order in terms of prayers (e) and (f) above.

i) Such further or orders be passed and/or direction or directions be given as to this Hon'ble Court may deem fit and proper.”

7. The respondents have filed an affidavit-in-opposition and have argued that the existing structures that were proposed to be constructed did not exist at the relevant time. After considering the aspects of the return which were filed under Section 6(1) by the respondent, the draft statement was prepared under Section 8(1) of the Act and the same was served upon the petitioner along with a notice to file an objection, if any, against the draft statement vide 217-DS/UL (Cal) dated 23.09.1980. Upon receiving such Notice, the Petitioner objected to such draft statement and the proceeding was initiated. After several adjournments, the hearing took place on 13.02.1981 and after several objections with respect to the ceiling area, an inquiry was ordered and the same was fixed to be held on 19.03.1981. The petitioner was directed to remain present on the spot with all relevant papers. Subsequently, the date of enquiry was again shifted to 02.04.1981 and on the said date the inquiry officer went to the office of the company but no one on behalf of the company attended the inquiry. However, the opportunity of a hearing was again extended on numerous dates thereafter on 19.05.81, 09.06.1981, 30.06.1981, 23.07.1981 and 11.08.1981 but subsequent failures to attend the hearing resulted in completion of the proceeding on the basis of the Inquiry Report. The matter was taken up for hearing ex-prate on 11.08.1981. The

Final Statement was prepared and served vide memo no. 214/DS/F/UL(Cal) dated 28.7.82. Notification under Section 10(1) was prepared vide memo No. 6(1)/163/V-4/76 and was published on 20.9.1982 and declaration under Section 10(3) was prepared and published on 24th February 1986 and notice under Section 10(5) for taking over possession was prepared and served vide no. 173/DS(P)-UL/6(1)163/V-4/76 dated 26.05.1986.

8. Next, the respondents argue that considering the objection which was filed by the petitioner's company along with all other Materials on Record it was held that the petitioner's company was entitled to retain 985 Sq.mtr. of land in respect of a dwelling unit with a covered area of 323 Sq. mtr land appurtenant of 162 Sq.mtr. and additional land appurtenant of 500 Sq mtr. and the excess vacant land was determined to be 9,457 Sq mtr. which was vested in the State. A copy of this order was served on the petitioner on 20.08.1982.

9. Next, the respondents argue that a Notification under Section 10(1) of the Act was published vide Memo No. 248/DS(N)-UL(Cal) dated 08.09.1982 in the Calcutta Gazette (Extraordinary) copy, dated 20.09.1982. Notification U/s 10(3) of the Act was published vide Memo No.29/D-UL(Cal) dated 19.02.1982 in the Calcutta Gazette (Extraordinary), dated 24.02.1982 declaring the excess vacant land of the extent of 9,457 Sq.mtr. to be vested in government. The petitioner was also served with the notice vide Memo No. 173/DS(P)-UL dated 26.05.86 directing to hand over the possession of the excess vacant land to Sri

Ranjan Kumar Bose, Asstt. Chief Valuer, Kolkata Improvement Trust, the person authorized by the Government of West Bengal to receive possession of ceiling surplus land under the said Act.

10. Next, the learned Advocate for the respondents argues that the statement of the petitioner that there were 20 structures on the land in question along with a tank and jheel is false as there was neither any mention of such structure at the time of filling of the return statement under Section 6(1) of the Act nor was it apparent at the time of inquiry held at the spot on 02.01.1981. The respondents state that in the report filed by the petitioners under Section 6(1), there was no mention of any agricultural land prior to the commencement of the Act, and no mention of the employees of the drug and cosmetic industry making the pucca structures as their residential houses. They also deny the statement of the petitioner that some tenants were taking the protection of the Thika Tenancy Act, 1981. They denied that the petitioners had given possession of portions of land and structures erected thereupon to various persons in pursuance of any agreement of sale. Any unauthorized occupation of any land does not qualify for exemption on that part of the land under such unauthorized occupation from the calculation of excess vacant land. Moreover, on the date of inquiry on 02.04.1981, neither any Hindu temple was found to be erected on the premises as alleged by the petitioner nor was it found that a part of the land was given for the purpose of charity.

11. The Urban Land (Ceiling and Regulation) Act, 1976 provides for imposition of a ceiling of vacant land in urban agglomerations for

acquisition of such land in excess of ceiling limit, to regulate the construction of buildings on such land and also for matters connected therewith. The purpose of the Act is to prevent the concentration of urban land in the hands of a few persons, speculation and profiteering therein. The objective of the Act is equitable distribution of land in urban agglomerations to sub-serve the common good. Section 6 of the Act mandates upon the person holding vacant land in excess of the ceiling limit on the date of commencement of the Act, to file statement before the competent authority specifying the location, extend value and such other particulars as may be prescribed of all vacant land and any other land on which there is a building held by the person who submits the statement including the nature of his right, title or interest therein. Under Section 6 of the Act the person filing the statement can specify the vacant land ceiling limit which he desires to retain.

12. In the instant case the petitioner company purchased the subject land by a registered deed of conveyance on 7th May, 1966. It is not in dispute that after Urban Land (Ceiling and Regulation) Act, 1976 came into force with effect from 17th February, 1976 the petitioner company submitted a statement/return under Section 6(1) before the concerned authority. It is not denied by the petitioner that on the basis of the said statement a draft statement under Section 8 of the said Act as regards the vacant land held in excess of ceiling limit was prepared and the said draft statement was served upon the petitioner on 23rd September, 1980. The petitioner was called upon to file objection, if any, against the said draft

statement. Accordingly, the petitioner filed objection which was duly considered by the competent authority and a final statement under Section 9 was prepared. It is also on record that the process of acquisition of vacant land of the petitioner was initiated by notification under Section 10(1) of the said Act which published on 20th September, 1982 in the official gazette.

13. It is stated by the petitioner in the instant writ petition that it transferred part of subject land to different persons belonging to lower and middle income group. Surprisingly enough, after publication of notice under Section 10(1) of the said Act not a single of such person came forward as person's interested in the vacant land to raise objection before the competent authority.

14. It was held by the competent authority that the petitioner company was entitled to retain 985 sq. mtr. of land in respect of a dwelling unit with a covered area of 323 sq. mtr. land appurtenant to 162 sq. mtr. and additional land appurtenant to 500 sq. mtr. The excess land is liable to be vested to the State.

15. It is the case of the petitioner that the petitioner was not served with the final statement under Section 9 of the said Act and thereby it was deprived from filing an appeal under Section 33 of the said Act.

16. From the affidavit-in-opposition it is found that the notice under Section 9 of the said Act was prepared and served to the petitioner on 28th July, 1982. Under the provision of Section 33 the petitioner ought to have filed an appeal within 30 days of the date on which order was

communicated to him. In the instant writ petition the petitioner cannot agitate that it was denied the opportunity of filing an appeal under Section 33 of the said Act. From the record it appears that the petitioner was given adequate opportunity to represent its case. However, they failed to appear before the competent authority to remain present in the inquiry of series of dates.

17. In view of such circumstances when the order under Section 10 has reached its finality, I do not find any merit in the instant writ petition.

18. Therefore, the instant writ petition is dismissed on contest, however, without cost.

(Bibek Chaudhuri, J.)