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20.03.2024
Ct-10
P.A./A.P

WPA No. 2223 of 2020

Shoaib Ahmed
Vs.
The State of W.B. & Ors.

With

WPA No. 2229 of 2020

Zulfikar Ahmed
Vs.
The State of W.B. & Ors.

With

WPA No. 2231 of 2020

Suhail Ahmed
Vs.
The State of W.B. & Ors.

WPA No. 2272 of 2020

Sabiranisha
Vs.
The State of W.B. & Ors.

Mr. Pulak Ranjan Mandal
Ms. Bandana Mandal

... for the petitioner.

Mr. Satyajit Talukdar
Ms. Rutika Verma

.... for the KMDA.

Mr. Jayanta Samanta
Mr. M.K. Sadhu

.... for the State.

Since all the writ petitions pertain to similar issues of law and fact, they are taken up for consideration together and are being disposed of by a common order.

Learned counsel for the Kolkata Metropolitan Development Authority (hereinafter referred to as the KMDA) has challenged the maintainability of the writ petitions on the ground of suppression of material facts by the petitioners. In view thereof, I propose to deal with the issue of maintainability in this order.

Challenging the maintainability of the writ petitions, learned counsel for the KMDA has submitted that the land acquisition proceedings being L.A. Case no. 25 (Act-II) CMDA of 1984-85 in respect of the land in question which is assailed in these writ petitions were earlier challenged before this Court in a writ petition being W.P. No. 15608 (W) of 2004. The writ petition was filed by the Bankra Nagarik Forum and others of which the petitioners were members at the relevant time. The Forum represented the petitioners in the writ petition and espoused their cause before the Court. The writ petition was dismissed on merits by an order passed on 27th July, 2010. The acquisition proceeding was also dealt with in an earlier writ petition being C.O. No. 16526 (W) of 1984 and was disposed of by a coordinate Bench of this Court by an order passed on 17th September, 1984. The petitioners not having succeeded

in the earlier writ petitions where they were represented by the Bankra Nagarik Forums have chosen to file separate writ petitions in their individual capacity on the identical issue which has already been decided earlier by this Court. The petitioners have therefore suppressed material facts and have not come before this Court with clean hands and the writ petitions should be dismissed on this ground alone.

Learned counsel has placed reliance on the authorities in Dalip Singh v/s. State of Uttar Pradesh and Others reported in (2010) 2 Supreme Court Cases 114 and S.J.S. Business Enterprises (P) Ltd. v/s. State of Bihar and Others reported in (2004) 7 Supreme Court Cases 166 in support of his contention.

Refuting the submission made on behalf of the KMDA, learned counsel for the petitioners has submitted that the issue relating to suppression of material facts cannot be decided as a preliminary issue without going into the merits of the case. Though the petitioners were members of the Forum which filed the earlier writ petitions, they did not file any other writ petition in their individual capacity. Learned counsel has stressed upon the constitutional right of the petitioners under Article 300A of the Constitution of India which envisages that no person shall be deprived of his property save by authority of law.

Referring to the report in the form of affidavit submitted on behalf of the State respondents, learned counsel has submitted that according to the said report, the Gazette notification under section 4(1a) of the West Bengal Land (Requisition and Acquisition) Act, 1948 was published on 7th April, 1987 and award was declared only on 28th October, 2004. In view of section 7A of the Act of 1948, the notice has lapsed. The petitioners purchased freehold land in 2004. By that time the acquisition proceeding had lapsed and the land in question was free from acquisition. Also, award was declared in favour of persons, some of whom were dead at the time of such declaration.

I have considered the rival contention of the parties and material on record.

In the present writ petitions, the petitioners have prayed for issuance of writ in the nature of mandamus directing the respondents to recall, rescind or revoke the purported land acquisition proceedings being L.A. Case No. 25 (Act-II) CMDA of 1984-85 in respect of the land in question, not to take possession of the said land and not to proceed any further with the land acquisition proceeding in respect of the said land. In the earlier writ petition being W.P. No. 15608 (W) of 2004, the petitioners herein, being members of Bankra Nagarik Forums were represented by the said Forum before the writ Court. The petitioners sought to move the

application in the representative capacity. The issues in the said writ petition are identical to that of the present petitions. The contention of the petitioners in the earlier writ petition was dealt with by a coordinate Bench of this Court and in dismissing the writ petition by an order passed on 27th July, 2010, the learned Court referred to the order passed in previous writ petition being Civil Rule No. 16526 (W) of 1984 which was disposed of by an order dated 17th September, 1984 and recorded that the learned Court did not restrain the respondents from further proceeding with the acquisition before payment of compensation. It was also held that the acquisition was not in violation of any order of this Court.

Though the petitioners have referred to the order passed in Civil Rule No. 16526 (W) of 1984 in the writ petitions, the order passed in W.P. No. 15608 (W) of 2004 on 27th July, 2010 has not found place within the four corners of the petitions. Since the petitioners were represented in the earlier writ petition, it was within their knowledge that the said petition was filed on identical issues as in the present ones and was dismissed on merits.

In the authority in *Shri K. Jayaram & Ors. v/s. Bangalore Development Authority & Ors.* in Civil Appeal No(s). 7550-7553 of 2021, the Hon'ble Supreme Court has held that when the petitioner does not come before the Court with clean hands and suppresses or distorts

material facts, the writ petition ought to be dismissed on that score without adjudicating the matter. The relevant portion of the judgment is set out:-

“It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the Court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced.”

In the authority in *Prestige Lights Limited v/s. State Bank of India* reported in (2007) 8 Supreme Court Cases 449, the Hon’ble Supreme Court has held that if there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ Court may refuse to entertain the petition and dismiss it without adjudicating the matter on merits. The said proposition has been echoed by the Hon’ble Supreme Court in the authority in *Dalip Singh* (supra).

In the authority in S.J.S. Business Enterprises (P) Ltd. (supra), the Hon'ble Supreme Court has held that suppression of material fact by a litigant disqualifies such litigant from obtaining any relief. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the Court, whatever view the Court may have taken.

In the present cases, the prayers made by the petitioners and the issues for consideration are identical to that of the earlier writ petition being W.P. No. 15608 (W) of 2004. The petitioners were represented in the said writ petition and the issues were adjudicated upon hearing the petitioners. The petitioners were all throughout aware of this fact despite which they have deliberately suppressed the same in the present writ petitions. The suppressed fact is material for the consideration of this Court in the present cases so much so that the earlier decision operates as res judicata and fresh adjudication of the issues already decided earlier may lead to conflict of decisions.

In view of the above, this Court is inclined to hold that the petitioners have not come before this Court with clean hands and have suppressed material facts. The writ petitions are liable to be dismissed on this score alone.

Accordingly, the writ petitions being W.P.A. 2223 of 2020, W.P.A. 2229 of 2020 W.P.A. 2231 of 2020 and W.P.A. 2272 of 2020 are dismissed.

There shall however be no order as to costs.

Since no affidavit is invited, the allegations contained in the petitions are deemed not to have been admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)