

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

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 7136 of 2023

**Srijan Infrarealty Private Limited & Ors
Vs.
The Union of India & Ors.**

For the Petitioners:	Mr. Aniruddha Chatterjee, Adv., Mr. Siddhartha Banerjee, Adv., Mr. Rahul Karmakar, Adv. Mr. Abhisek Baran Das, Adv., Mrs. Srijoni Chondar, Adv.,
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For the Respondent nos. 1 to 5:	Mr. Susmita Saha Dutta, Adv. Mr. N. Saha, Adv.
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For the State:	Mr. Chandi Charan De, Adv., Mr. Anirban Sarkar, Adv.,
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For the Private Respondent:	Mr. Sandipan Das, Adv.,
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Hearing Concluded on:	19.12.2023
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Date:	11.01.2024
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SUVRA GHOSH, J. :-

1. The petitioners are aggrieved by the notice issued by the Custodian of Enemy Property for India in two newspapers The Telegraph and Anandabazar Patrika on February 16, 2023, restricting transfer/sale of enemy properties. The notice informs that eight immovable properties

situated at 47, Matheswartala road, Kolkata – 700046 are vested with the Custodian of the Enemy Property for India.

2. The petitioners claim to be joint lessees in respect of the property in question wherein they are developing a residential complex through petitioner no. 15. Learned counsel for the petitioners submits that the eight properties declared to be vested are not demarcated and cannot be identified for which the public notice issued by the respondents has adversely affected the petitioners' property, restraining transfer of flats and constructed space therein. Drawing the attention of the Court to annexure P-1 of the writ petition, learned counsel for the petitioners submits that the plot in question was originally owned by Indian nationals and not by any foreign national. Though undivided shares/interest in the property were leased out to the petitioners, each of the properties is well demarcated and identifiable. The petitioners' names have been mutated in respect of the plots in question upon amalgamation of three plots being 24C, 24 C/1 and 47, Matheswartala road. The property never being owned or managed on behalf of the enemy, an enemy subject or an enemy firm cannot be said to be an enemy property. The notice impugned is vague since it does not identify the eight properties described as enemy properties and also does not exclude all other properties within the same premises. The notice was issued by the respondents at the behest of the private respondent who has no nexus whatsoever with the plot in question and lodged several complaints before various authorities indicating violation of The Enemy Property Act, 1968. Since the leasehold property of the petitioners is not governed by the Act of 1968, the petitioners

seek withdrawal/recalling/revocation of the public notice dated February 16, 2023. The plot in question not being vested, the question of challenging the vesting order does not arise. Besides praying for setting aside the notice, the petitioners have also prayed for identification/demarcation of the eight properties covered by the notice.

3. Speaking for respondent nos. 1 to 5, learned counsel has at the outset, challenged the maintainability of the writ petition on the ground that the grievance of the petitioners with regard to vesting of the property in question should be dealt with by the Central Government under section 18 of The Enemy Property Act, 1968 (hereinafter referred to as the Act of 1968) and no civil Court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any property which is the subject matter of this Act. Most of the petitioners are lessees in respect of the enemy property which was vested in 1963 with the Custodian of Enemy Property under the Government of India. The lessors who have granted lease for a period of 999 years are Chinese nationals who have not been made parties to the writ petition. The petitioners have acquired undivided shares in the leasehold plot and are not entitled to claim title in respect of a demarcated portion of the land, the plot being admittedly an unpartitioned property. Learned counsel has further submitted that despite several attempts made by the department to get the map and revenue/survey record of the plot from the Kolkata Municipal Corporation along with other important documents/records, such records were not made over to them.

4. Challenging the public notice tantamounts to challenging the vesting order which cannot be dealt with by this Court in view of an alternative efficacious remedy available to the petitioners under section 18 of the 1968 Act.
5. The private respondent, at whose behest the ball was set rolling has submitted that the custodian of an enemy property is responsible for identifying the eight properties declared to be enemy properties. According to the learned counsel, the notice impugned is completely vague since it contains no property details. It is evident from the notice that the authority is unable to identify its own property. The authority is required to hold an investigation in order to identify all the enemy properties situated in Matheswartala road.
6. Section 2(b) defines “enemy” or “enemy subject” or “enemy firm” as “ a person or country who or which was an enemy, [an enemy subject including his legal heir and successor whether or not a citizen of India or the citizen of a country which is not an enemy or the enemy, enemy subject or his legal heir and successor who has changed his nationality] or [an enemy firm, including its succeeding firm whether or not partners or members of such succeeding firm are citizen of India or the citizen of a country which is not an enemy or such firm which has changed its nationality], as the case may be, under the Defence of India Act, 1962, and the Defence of India Rules, 1962, [or the Defence of India Act, 1971 (42 of 1971) and the Defence of India Rules, 1971] [does not include a citizen of India other than those citizens of India, being the legal heir and successor of the “enemy” or “enemy subject” or “enemy firm”];”

7. Section 2(c) envisages that “enemy property” means any property for the time being belonging to or held or managed on behalf of an enemy, an enemy subject or an enemy firm.
8. The notice impugned refers to eight immovable enemy properties situated at 47, Matheswartala road which are vested with the Custodian of Enemy Property for India (in short the CEPI). The notice restricts transfer/sale of the said properties.
9. It is not in dispute that there are several other properties in 47, Matheswartala road besides the eight properties covered by the notice and the properties in question are undivided and have not been demarcated by metes and bounds. The CEPI has admitted that the department has made several attempts to obtain revenue/survey records and other relevant documents pertaining to the entire plot and has been able to lay hands only on century old C.S. records and nothing more. The authority has also stated that since nationality of the alleged lessors who claim to be Indians is doubtful, an internal enquiry is about to be held by the competent authority in this regard.
10. Therefore it can be inferred that the authority themselves are uncertain regarding the identity of the persons who are in occupation of the property. The deeds submitted on behalf of the petitioners prima facie indicate that the petitioners are lessees in respect of some of the undemarcated properties in 47, Matheswartala road by virtue of deeds executed in their favour by the lessors who appear to be Indian nationals. Annexure P-1 to the writ petition also suggests that the original owners of the plots were Indians.

11. Be that as it may, the moot question for consideration herein is whether the notice impugned pertains to the leasehold plots of the petitioners. Since admittedly only eight properties in plot no. 47 appear to have been vested with the CEPI, it cannot be ascertained as to which of the properties are vested unless the vested properties are clearly demarcated. The respondents have failed to produce any document in respect of such vesting and have in fact admitted that the entire property is undemarcated. The notice restricting the general public to enter into, sale or transfer the property is vague in so much as it is bereft of description/identification of such property.
12. In the instructions in the form of affidavit submitted by them, the CEPI has submitted a list of enemy nationals/firms whose properties have been declared as enemy properties and vested in the CEPI. The names of the owners recorded therein differ from that of the owners and vendors appearing in annexure P-1 to the writ petition, meaning thereby, that the properties referred to in the instruction is different and distinct from the ones stated in the writ petition.
13. The petitioners have prayed for withdrawal/revocation of the notice impugned published on February, 16, 2023 and a direction upon the respondents to identify and demarcate the eight immovable properties referred to in the notice. The private respondent has supported the petitioners' case to the extent of the notice being vague and the vested land being undemarcated and unidentifiable. It is needless to record that unless the eight properties vested in the CEPI are identified and demarcated, the

notice cannot be given effect to. Also, the freehold plots should not be made to suffer in view of the omnibus notice issued by the authority.

14. Last but not the least, the respondents (CEPI) have challenged the maintainability of the writ petition on the ground that since the petitioners are aggrieved by the order of vesting, their remedy lies under section 18 of The Enemy Property Act, 1968.
15. It shall be profitable to reproduce section 18 of the Act of 1968:- “18. *Transfer of property vested as enemy property in certain cases.- The Central Government may, on receipt of a representation from a person, aggrieved by an order vesting a property as enemy property in the Custodian within a period of thirty days from the date of receipt of such order or from the date of its publication in the Official Gazette, whichever is earlier and after giving a reasonable opportunity of being heard, if it is of the opinion that any enemy property vested in the Custodian under this Act and remaining with him was not an enemy property, it may by general or special order, direct the Custodian that such property vested as enemy property in the Custodian may be transferred to the person from whom such property was acquired and vested in the Custodian.]”*
16. Section 18C entitles the petitioners to approach the High Court only upon being aggrieved by an order of the Central Government under section 18 of the Act.
17. In the present case, the petitioners have not assailed the order of vesting in connection with the eight properties in plot no. 47. Their contention is that

their properties are not part and parcel of the eight properties vested in CEPI. Since admittedly there are other properties in the plot besides the eight vested properties, it is not improbable that the petitioners' properties are not part of the vested properties.

18. Learned counsel for the CEPI has placed reliance on several judgments of this Court which deal with the proposition whether the properties in question are enemy properties and are vested in CEPI. Vesting of the eight properties not being under challenge in this writ petition, the *ratio decidendi* of the authorities relied upon by the respondents can be distinguished from that of the present case.
19. In the result, this Court is of the view that the provision laid down under section 18 of the Act of 1968 is not applicable in this case and as such, the writ petition is maintainable in its present form and prayer.
20. In the light of the observation made hereinabove, this Court is inclined to hold that the notice impugned dated February, 16, 2023, is vague and without any foundation. In the least, such notice should contain clear, specific and unambiguous description of the eight immovable properties declared as enemy properties and vested in the CEPI.
21. In the result, the writ petition succeeds.
22. The notice impugned dated February 16, 2023 is set aside.
23. However, respondent nos. 1 to 5 are at liberty to publish a fresh notice indicating proper identification/demarcation of the eight immovable properties situated at 47, Matheswartala road which are vested in the CEPI.

24. There shall however be no order as to costs.
25. Since no affidavit is invited, the allegations contained in the writ petition are deemed not to be admitted.
26. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)