

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

**Present:**

**The Hon'ble Justice Partha Sarathi Sen**

**WPA 10678 of 2022**

**M/s KOD Developers LLP & Anr.  
Vs.  
The West Bengal Housing Infrastructure  
Development Corporation & Ors.**

For the petitioners : Mr. Ashok Kr. Banerjee, Sr. Adv.  
Mr. Tapojit Dey

For the WBHIDCO : Mr. Chayan Gupta  
Mr. Sandip Dasgupta  
Mr. Saaqib Siddiqui

Heard on : 20.02.2024

Judgement on : 20.02.2024

**PARTHA SARATHI SEN, J.:**

1. The writ petitioners and the respondents are represented by their respective learned Advocates.

- 2.** The affidavit-in-opposition as filed on behalf of the respondents today is taken on record.
- 3.** This Court has heard Mr. Banerjee, learned Senior Advocate on behalf of the writ petitioners at length and Mr. Gupta, learned Advocate for the respondents. The present case is now taken up for passing appropriate order.
- 4.** By filing the instant writ petition under Article 226 of the Constitution of India the writ petitioners have prayed for setting aside the impugned reasoned order dated 24.11.2020 as passed by the Chairman of the respondent No. 1 with a further prayer for issuance of writ of mandamus commanding and/or directing the respondent No. 1/authority and its officials to grant no objection in favour of the petitioners for development of the property of the writ petitioner which is the subject matter of the instant writ petition.
- 5.** In support of the instant writ petition, Mr. Banerjee, learned Senior Advocate appearing for the writ petitioners contended before this Court that under a compelling circumstances in a third round of litigation the present writ petitioners have to approach before this Court for obtaining appropriate relief in view of the fact that the present writ petitioners, more specifically; the writ petitioner No. 2 being the owner of a

portion of plot No. 5967 has prayed for no objection for development of his plot of land before the respondent No. 1 which was declined by the respondent No. 1/authority and/or its chairman and/or its officials under cover of its reasoned order dated 24.11.2020.

- 6.** In course of his submission Mr. Banerjee, learned Senior Advocate for the writ petitioners at the very outset draws attention of this Court to page No. 22 of the writ petition being Annexure-P4. It is contended that from the photocopy of the said document, it would reveal that writ petitioners purchased a plot of land in plot No. 5967 having an area of 0.1000 acre which was previously a 'sali' land and which has been subsequently converted to a 'bastu' land by the BL&LRO on the basis of their application for conversion. It is further contended that immediately after allowing of such conversion, the writ petitioners approached the respondents/authorities for granting no objection so as to enable the present writ petitioners for further development of the land of the writ petitioners at plot No. 5967. However, such request was not considered favourably which is why the writ petitioners were compelled to approach the Hon'ble Court by filing a separate writ petition from which an appeal was preferred before the Hon'ble Division Bench of this Court being MAT No. 579 of

2020 where the Hon'ble Division Bench vide its order dated 14.10.2020 directed the respondents/authorities to hear out and to dispose of the prayer of the present writ petitioners in accordance with law.

**7.** In course of hearing, Mr. Banerjee further draws attention of this Court to page No. 39 being Annexure – P7. It is argued that from the said Annexure – P7 it would reveal that in WP 21509 (W) of 2000 a co-ordinate Bench of this Court by its order dated 02.05.2001 directed for maintaining *status quo* in respect of a portion of land in plot No. 5967 and such *status quo* though is still prevailing but the said order does not cover the entire plot of land and further the present writ petitioners are not the parties to the said writ petition. It is thus argued by Mr. Banerjee, learned Senior Advocate on behalf of the writ petitioners that the respondents/authorities are at fault in not considering the representation of the present writ petitioners favourably on the basis of the said order of *status quo* which according to Mr. Banerjee is not justifiable in the eye of law.

**8.** In course of his submission Mr. Banerjee further submits that on the basis of a RTI application the respondents/authorities under cover of its letter dated 04.12.2019 informed the writ petitioners that in respect of plot Nos. 5967 and 6036 under

the self-same 'mouza' cases are pending and inspite of the same prayer for access has been granted to one M/s. Gurmaan Automobiles Private Limited who is a co-owner of plot No. 6036. Mr. Banerjee argued that grant of permission of access to M/s. Gurmaan Automobiles Private Limited in plot No. 6036 overlooking that a lis is there in respect of the said plot of land and declining the request made by the writ petitioners to allow them to develop the land in a portion of plot No. 5967 in respect of which according to the respondents a litigation is also pending, is not only violative of the principle of natural justice but also violates the right to equality as mandated under Article 14 of the Constitution of India.

- 9.** Drawing attention to the affidavit-in-opposition as filed on behalf of the respondents it is argued that in the said affidavit-in-opposition nothing has been placed in black and white to substantiate as to what prevented the respondents/authorities not to accede to the request of the writ petitioners. In course of his argument Mr. Banerjee, however, on instruction concedes that in the event the instant writ petition is allowed, his clients will not seek any equity in future in respect of the plot of land in question.

**10.** *Per contra* Mr. Gupta, learned Advocate for the respondents/authorities at the very outset submits before this Court that in the instant writ petition the writ petitioners have not annexed their deed of conveyance by which they claim their title. Drawing attention to Annexure-P7 of the writ petition that is the order dated 02.05.2001 as passed in WP 21509 (W) of 2000 it is contended by Mr. Gupta, learned Advocate for the respondents that from the said order it would reveal that a co-ordinate Bench of this Court passed an order of *status quo* in respect of plot No. 5967 and in absence of any material to substantiate that the present writ petitioners have purchased a demarcated portion of the said plot of land it cannot be said that the said *status quo* does not prevail over the said portion of land as claimed to have been purchased by the writ petitioners.

**11.** In course of his submission Mr. Gupta, learned Advocate for the respondents/authorities further draws attention of this Court to the Annexure – P5 at page No. 24 of the writ petition. It is argued that on a plain reading of the letter dated 30.09.2019 written by the writ petitioners it would reveal that they claim possession over the entire plot of land being plot No. 5967 since it has been specifically mentioned in the said letter that their possessed area is 1.58 acres. Mr. Gupta further

contended that the case of the present writ petitioners and the case of M/s. Gurmaan Automobiles Private Limited cannot be equated in view of the fact that M/s. Gurmaan Automobiles Private Limited has only sought for access right from the respondents/authorities in respect of plot No. 6036 whereas the present writ petitioners has sought for a permission to develop the plot of land being plot No. 5967. It is, thus, argued by Mr. Gupta learned Advocate for the respondents/authorities that neither the principle of natural justice nor a fundamental right being right of equality has been violated at the instance of the respondents/authorities.

- 12.** In course of his submission Mr. Gupta also places his reliance upon the reasoned order dated 24.11.2020 as passed by the Chairman cum Managing Director being respondent No. 2. It argued by him that in the said reasoned order it has been clearly mentioned that the plot No. 5967 is in the process of acquisition and to that effect a declaration under Section 6 has already been published in Gazette but the matter cannot be proceeded with in view of the pendency of proceeding before the Hon'ble Court being WP 21509 (W) of 2000 where a *status quo* order has been passed.

- 13.** Mr. Gupta thus submits that it is a fit case for dismissal of the instant writ petition.
- 14.** On perusal of the entire materials as placed before this Court and after hearing the learned Advocates for the contending parties it reveals to this Court that probably it is not in dispute that the present writ petitioners' name have been recorded in the record of right in respect of a portion of plot No. 5967 and the area of the such recorded of land is 0.1000 acre and nature of such land is 'bastu'. In view of such, this Court is of considered view that the present writ petitioners are successful in establishing their possession over 0.1000 acre of land in plot No. 5967 whereas the entire plot No. 5967 measures about 1.58 acres. In view of such, this Court cannot accept the contention of the respondents that the present writ petitioners are the recorded owners of the entire plot of land being plot No. 5967.
- 15.** At this juncture if this Court looks to the order dated 02.05.2001 as passed in WP 21509 (W) of 2000 it appears that an interim order of *status quo* was passed until further order and in such a case admittedly the present writ petitioners are not parties. On perusal of the photocopy of the writ petition as filed in WP 21509 (W) of 2000 it does not transpire to this

Court at least *prima facie* that the portion of the land as possessed by the writ petitioners is identical with the subject matter of land as involved in the said writ petition. It is settled principle of law that an order of injunction binds the parties to the litigation and not the others and since present petitioners are not a party to the said writ petition, in considered view of this Court the order of *status quo* as has been passed in WP 21509 (W) of 2000 does not affect the present writ petitioners. Since such an order is practically an order in personam but not an order in rem.

**16.** Admittedly the prayer of the present writ petitioners before the respondents/authorities and the prayer of the M/s. Gurmaan Automobiles Private Limited cannot be equated since the present writ petitioners has prayed for no objection with regard to the development of the land in its possession whereas M/s. Gurmaan Automobiles Private Limited has prayed for an access right and, therefore, this Court considers that violation of the principles of natural justice and/or violation of right to equality cannot come into play in disposing the instant writ petition.

**17.** At this juncture if this Court looks to the order dated 24.11.2020 which is under challenge in this writ petition it

reveals that in course of hearing before the Chairman cum Managing Director of the respondent No. 1, i.e., respondent No. 2, the L.A. Collector, North 24 Pgs. was present and he has submitted sufficient documents to show that the competent authority of the Government of West Bengal has started land acquisition proceeding and to that effect a declaration was made in gazette under Section 6 and the present petitioners' land fall within the area of the proposed acquisition which has, however, been disputed by the present writ petitioners. In the order under challenge dated 24.11.2020 it has categorically been mentioned by the respondent No. 2 that because of the *status quo* as passed in WP 21509 (W) of 2000 the respondents/authorities cannot proceed further.

- 18.** In considered view of this Court the view as taken by the respondent No. 2/authority is not tenable in view of the fact that nothing has been placed before this Court while submitting the affidavit-in-opposition that plot No. 5967 is under the process of acquisition and that the subject matter of the suit property as involved in WP 21509 (W) of 2000 is identical with the instant writ petition and more so the present writ petitioners are not a party to the said proceeding being the WP 21509 (W) of 2000.

**19.** In view of such, this Court finds sufficient merit in the instant writ petition especially in view of the submission on behalf of the writ petitioners that in the event the present writ petitioners are permitted to develop their portion in plot No. 5967 and subsequently it is found that their portion of land in the self-same plot is under process of acquisition, they will not seek any equity.

**20.** In view of the discussion made hereinabove the instant writ petition is allowed on contest. Consequently, the order under challenge dated 24.11.2020 as passed by the respondent No. 2 is hereby quashed. The respondents/authorities are hereby directed to grant no objection in favour of the petitioners for development of the portion of the plot of land as occupied by the petitioners in plot No. 5967 within a period of one month from the day of passing of this order.

**21.** It is, however, made clear that in this writ petition this Court has not discussed anything about the legality, propriety and validity of the L.A. Case No. 4/155 of 98-99 in respect of plot No. 5967 and thus the same is kept open and this order shall not have any favourable or adverse effect in the said L.A. Case No. 4/155 of 98-99.

**22.** With the aforementioned observations, the instant writ petition being **WPA 10678 of 2022** is disposed of.

**23.** Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

**(PARTHA SARATHI SEN, J.)**

**1.** After passing of the instant judgment, learned Advocate for the respondents/authorities has prayed for operation of the impugned judgment.

**2.** Prayer for stay is considered and rejected.

**(PARTHA SARATHI SEN, J.)**