

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

WPA 23718 of 2017

With

CAN 1 of 2019(Old No. CAN 8570 of 2019)

Siskin Hotels Pvt. Ltd.

-Vs-

The State of West Bengal and Ors.

For the Petitioner: Mr. Uday Shankar Chatterjee, Adv.,
Mr. Rabi Shankar Chatterjee, Adv.,

For the State: Mr. T.M Siddiqui, Sr. Adv.,
Mr. Suddhadeb Adak, Adv.

For the DSDA: Mr.N.C Bihani, Sr. Adv.
Mrs. P.B Bihani, Adv.,
Mr. Moulinath Moitra, Adv.,

For respondent no.11: Mr. Madan Mohan Roy, Adv.

Hearing concluded on: 19.12.2024.

Judgment on: 24.12.2024.

PARTHA SARATHI SEN, J. : -

1. By filing the instant writ petition under article 226 of the Constitution of India, the writ petitioner has prayed for issuance of appropriate writ commanding the respondents more specifically respondent no.5 for taking immediate steps to stop illegal digging on the land belonging to the writ petitioner with a further prayer for issuance of appropriate writ upon respondents/authorities for restoration of the land

belonging to the writ petitioner to its original shape along with other ancillary reliefs.

2. In course of his submission Mr. Chatterjee, learned advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to page nos.15 to 23 of the writ petition being a photo copy of the registered deed of gift dated 08.10.2009 whereby and whereunder the property in question being part(s) of the old Bata plot nos.1800/2160 and 1800/2208 was/were purchased by him for valuable consideration. It is the further case of the writ petitioner that after the purchase of the plots of land in the aforementioned two Bata plots which have been renumbered as LR Plot no.1978 and 1979 the name of the writ petitioner was duly recorded in the LRROR.

3. In course of his submission Mr. Chatterjee draws attention of this Court to the affidavit-in-opposition as filed by the respondent nos. 4 and 5 i.e. Digha Shankarpur Development Authority and its functionary. It is submitted that from the affidavit-in-opposition of the respondent nos.4 and 5 it would reveal that it is the admitted position that original CS Plot no.1800 in Mauja Khadal-Gobra was sub-divided into three plots being RS plot no.1800(original), RS Plot no.1800/2160 (Bata) and RS Plot no.1800/2208 (Bata). Drawing attention to page no.11 of the aforementioned affidavit-in-opposition it is contended by Mr. Chatterjee that in a proceeding under Section 51(A) of West Bengal Land Reforms Act, 1955 (hereinafter referred to as the said 'Act of 1955' in short) the respondent nos. 4 and 5 raised an objection to the effect that the

aforementioned three Bata plots have already been recorded in the names of the respondent no.4/authority by virtue of a land acquisition proceeding and therefore the record of rights in respect of the two Bata plots namely; 1800/2160 and 1800/2208 be rectified and recorded in the name of the respondent no.4/ authority instead of one Anjali Khan. Drawing attention to page no. 9 of the said affidavit-in-opposition it is submitted by Mr. Chatterjee that in a proceeding under Section 41A of the said Act of 1955 the Revenue Officer accepted the objection raised by the respondent no.4 and came to a finding that the name of the said Anjali Khan was wrongly recorded in the aforementioned two Bata plots namely; 1800/2160 and 1800/2208 and directed for correction of record of rights in the name of respondent no.4/authority in respect of the aforesaid two Bata plots.

4. Drawing further attention to page no.14 of the affidavit-in-reply as filed by the writ petitioner against the affidavit-in-opposition of the respondent nos. 4 and 5 it is submitted by Mr. Chatterjee that challenging the said order of Revenue Officer dated 06.09.1994 an appeal was preferred before the appellate authority under Section 54 of the said Act of 1955 and by an order dated 10.01.2008 the appellate authority set aside the order of the Revenue Officer as passed on 06.09.1994. It is further submitted by Mr. Chatterjee that in the said appeal the appellate authority came to a specific finding that the aforementioned two plots have not been acquired in connection with the LA case no.16/55-56 though the said two Bata plots were involved in the aforementioned LA

case. It is further contended by Mr.Chatterjee that the appellate authority by its order dated 10.01.2008 submitted that since the said two Bata plots have never been acquired the direction passed by the Revenue Officer under cover of its order dated 06.09.1994 for correction of the record of rights in favour of the respondent nos.4 and 6 is erroneous. It is further submitted by Mr. Chatterjee that challenging the said order dated 10.01.2008 no appeal has been preferred by the respondents nos. 4 and 5 and thus the order dated 10.01.2008 as passed under Section 54 of the said Act of 1955 has attained its finality. In course of his submission Mr. Chatterjee further draws attention of this Court to the order dated 14.06.2004 as passed by a Co-ordinate Bench in WP no. 2511(W)/2004 whereby and whereunder the prayer of the petitioner (one Dilip Ghosh) of the said writ petition for compensation was not considered favourably in view of the finding of the said Court that the land in question have not been acquired.

5. Mr. Chatterjee also draws attention of this Court to page no.19 of the affidavit-in-reply as filed by him against the affidavit-in-opposition of the respondent nos.4 and 5. It is submitted that in OA no.1417/10 (LRTT) by its order dated 20.07.2010 the Tribunal directed the BL&RO Ramnagar, District Purba Mednipur to consider the representation of the writ petitioner for recording of its name in respect of the aforesaid two Bata plots in accordance with law which indicates that the aforesaid two Bata Plots were practically free-hold lands occupied by the writ petitioner

and the other co-riyats and the said two Bata plots were never acquired by the respondent/State as wrongly claimed.

6. It is thus submitted by Mr. Chatterjee that from the materials as placed before this Court it would reveal that in respect of the aforementioned two Bata plot nos.1800/2160 and 1800/2208 the present writ petitioner is the lawful owner and occupier of the same and therefore the respondents/authorities more specifically respondent nos. 4 and 5 cannot be permitted to proceed with the work of digging of the land of the writ petitioner violating the writ petitioner's constitutional right as enshrined in Article 300 A of the Constitution of India.

7. Per contra, Mr. Bihani, learned Sr. Advocate appearing on behalf of the respondent nos.4 and 5 being the requiring body and its functionary at the very outset draws attention of this Court to the prayer made in the writ petition. It is submitted by Mr. Bihani, learned Sr. Advocate that in such prayers the writ petitioner has not made any prayer for issuance of appropriate writ by setting aside the gazette notification of L.A proceeding in respect of the aforementioned two Bata Plots. It is further submitted by Mr. Bihani, learned Sr. Advocate that from the recitals of the title deed dated 08.10.2009 of the writ petitioner it cannot be ascertained as to how the title passes to the writ petitioner in respect of the portions of the aforementioned two Bata plots and thus the writ petitioner is not entitled to any relief as prayed for.

8. In his next fold of submission of Mr. Bihani, learned Sr. Advocate took me to the affidavit-in-opposition as filed by his client on 09.07.2018.

Drawing attention to page nos. 7 and 8 of the said affidavit-in-opposition being a photo copy of the gazette notification dated 14.10.1955 it is contended that by virtue of the said notification dated 14.10.1955 the original RS Plot no.1800 in Mauja Khadal-Gobra was acquired by the respondent/State in a land acquisition proceeding. It is submitted further by Mr. Bihani that though subsequently the original plot no.1800 was divided into three sub plots being no. 1800 and Bata plot nos. 1800/2160 and 1800/2208 but for some reason or other in respect of the said two Bata plots it was noticed by the respondent no.4/authority that its name had not been recorded in respect of the said two Bata plots and thus an objection was submitted by respondent no.4/authority with the Revenue Officer under Section 51(A) of the Act of 1955. Mr. Bihani, learned Sr. Advocate contended further that by an order dated 06.09.1994 the Revenue Officer though considered such objection of the said respondent no.4 favourably in respect of the aforementioned two Bata plots but in an appeal preferred by one Anjali Khan the appellate authority set aside the order of the Revenue Officer holding that Bata plots nos. 1800/2160 and 1800/2208 were never acquired and thus there is no necessity for recording the name of respondent no.4/authority in the record of rights in respect of the said two Bata plots.

9. Drawing attention to the provision of Section 51(A) and Section 54 of the said Act of 1955 it is argued by Mr. Bihani that the Revenue Officer and its appellate authority are empowered to pass the appropriate order for publication of draft and final record of rights and/or correction of

record of rights but none of the aforesaid two authorities under the Act of 1955 are empowered to raise question with regard to the legality, validity and correctness of land acquisition proceeding which at that material time was governed under the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act of 1894' in short). It is thus submitted by Mr. Bihani, learned Sr. Advocate that the finding of the appellate authority dated 10.01.2008 has got no bearing in the instant *lis*.

10. In his next fold of submission Mr. Bihani, learned Sr. Advocate also draws attention of this Court to the affidavit-in-opposition as filed on behalf of the respondent/State more specifically by the Land Acquisition Collector, Purba Mednipur. It is submitted that from the affidavit-in-opposition as filed by the said collector it would reveal that the entire plots of land bearing plot no.1800 was acquired by virtue of a gazette notification dated 14.10.1955 under Section 6 of the Act of 1894 and the possession of the said plot no.1800 was handed over to the Executive Engineer, Construction Division in between 1955 to 1957 and the third party interest have been created in the mean time by the respondent no.4, who is the requiring body which may not be vitiated by issuing any writ as prayed for by the writ petitioner.

11. Mr. Bihani, learned Senior Advocate places reliance upon the reported decisions of ***Jitendra Singh vs. State of Madhya Pradesh and Ors.*** reported in **2021 SCC Online SC 802** and ***Indore Development Authority vs. Manoharlal and Ors.*** reported in **(2020) 8 SCC 129**.

12. Mr. Siddiqui, learned Sr. Advocate appearing for the State while adopting the argument of Mr. Bihani also draws attention of this Court to the prayer portion of the writ petition. It is submitted by Mr. Siddiqui, learned Sr. Advocate that the prayers as made in the writ petition are governed under the Specific Relief Act and for which the writ petitioner is supposed to approach the common law forum by filing civil suit. It is thus submitted by Mr. Siddiqui that in view of the availability of the alternative remedy this Court while exercising its writ jurisdiction must be very slow in issuing any writ against the respondents. In course of his submission Mr. Siddiqui, learned Sr. Advocate also draws attention of this Court to the gazette notification dated 14.10.1955 as has been annexed to the affidavit-in-opposition filed by the respondent/State on 26.11.2019. It is submitted that from the said gazette notification it would reveal that the entire RS plot no.1800 Mauja Khadal-Gobra has been acquired by the respondent/State by issuing a gazette notification and from page no.9 of such affidavit-in-opposition it would reveal further that the entire RS plot no.1800 has been handed over to the Executive Engineer, Construction Division (Roads) between 28.11.1955 and 09.05.1957 in connection with LA case no.16/1955 and 1956. It is further submitted by Mr. Siddiqui that the registered deed of conveyance dated 08.10.2009 was executed much after land acquisition proceeding and thus the present writ petitioner cannot get any title over any portion of the aforementioned two Bata plots since his vendor Hemanta Kumar Mishra had no marketable title over any portion of the lands in the aforementioned two Bata plots.

13. Mr. Siddiqui, learned Sr. Advocate further argued that inordinate delay occurred in filing the instant writ petition and thus the writ petitioner is not entitled to any relief as prayed for since the respondent no.4 being the requiring body had created third party interest in the mean time.

14. It is further submitted by Mr. Siddiqui that neither the Revenue Officer nor the appellate authority under the provisions of Section 51 and 54 of the said Act of 1955 can come to a finding with regard to the genuineness of any land acquisition proceeding since under the above mentioned two Sections their powers are limited to the extent of revision, correction and publication of the final record of rights after entertaining the objections, if there be any. It is thus submitted by the Mr. Siddiqui, learned Senior advocate appearing for State that it is a fit case of dismissal of the instant writ petition.

15. In course of submission Mr. Siddiqui places his reliance upon the reported decisions of ***Mahavir and Ors. Vs. Union of India and Anr*** reported in ***(2018) 3SCC 588*** and ***Indore Development Authority vs. Manoharlal and Ors.*** reported in ***(2020) 8 SCC 129***.

16. Upon consideration of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties this Court proposes to come to a logical conclusion as to whether the instant writ petition is at all maintainable or not in view of the fact it has been strongly contended on behalf of both sets of respondents that from the prayers made in the writ petition it would reveal that the writ

petitioner has not made any prayer for issuance of appropriate writ for cancelation and/or setting aside the land acquisition proceeding and also on account of availability of alternative remedy.

17. At this juncture this court intends to place its reliance upon the reported decision namely; ***Radha Krishan Industries vs. State of Himachal Pradesh*** reported in **(2021) 6 SCC 771** wherein the Hon'ble Apex Court have dealt with principles of law relating to exercise of writ jurisdiction even when alternative remedy is available. Relevant portion of the reported decisions of ***Radha Krishan Industries (supra)*** is reproduced hereinbelow in verbatim:-

“27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where:

(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;

(b) there has been a violation of the principles of natural justice;

(c) the order or proceedings are wholly without jurisdiction; or

(d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in Chand Ratan v. Durga Prasad reported in (2003) 5 SCC 399, Babubhai Muljibhai Patel v. Nandlal Khodidas Barot reported in (1974) 2SCC 706 and Rajasthan SEB v. Union of India reported in (2008) 5 SCC 632 among other decisions.”

18. Keeping in mind the above proposition of law if I look to the writ petition as well as to its prayer portion it appears to me that the writ petitioner by filing the instant writ petition has practically made an attempt to establish its title over the portions of the aforesaid two Bata plots by virtue of the registered deed of conveyance dated 08.10.2009 as executed in its favour.

19. From the prayer portion of the writ petition it further appears to this Court that the writ petitioner has practically made prayer for issuance of prohibitory and mandatory injunction which is admittedly the subject matter of the Specific Relief Act and can be sought by approaching jurisdictional civil court by filing a civil suit.

20. In course of his argument Mr. Chatterjee was very vocal regarding the order dated 14.06.2004 as passed by the appellate authority in a proceeding under Section 54 of the Act of 1955. Admittedly while passing the order dated 10.01.2008 the appellate authority under Section 54 of the said Act of 1955 set aside the order of the Revenue Officer regarding the correctness of the record of rights in respect of the aforementioned two Bata plots holding that no land acquisition took place in respect of the aforementioned two Bata plots which are part and parcel of the original RS Plot no. 1800. The most crucial question thus come up for consideration before this Court is as to whether an appellate authority under Section 54 of the said Act of 1955 can at all come to such a finding within the periphery of the said Act of 1955.

21. Admittedly at the relevant point of time the land acquisition was governed under the Act of 1894 and the said Act prescribes the mode of acquisition of land, quantification, disbursement of compensation and provision of appeal, if a land looser is aggrieved with the quantum of acquisition.

22. In considered view of this Court however, the Act of 1955 operates in a different domain which is distinguishable from the domain of the Act of 1894. For effective adjudication of the instant writ petition this Court now proposes to look to the provision of Section 51(A) and 54 of the West Bengal Land Reforms Act, 1955 which are reproduced hereinbelow in verbatim:-

“51A. Draft and final publication of the record-of-rights. (1)

When a record-of-rights has been revised or prepared, the Revenue Officer shall publish a draft of the record so revised or prepared in the prescribed manner and for the prescribed period and shall receive and consider any objections which may be made during such period to any entry therein or to any omission therefrom.

(2)When all such objections have been considered and disposed of according to such rules as the State Government may make in this behalf, the Revenue Officer shall finally prepare the record and cause such record to be finally published in the prescribed manner and make a certificate stating the fact of such final publication and the date thereof and shall date and subscribe the same under his name and official designation.

(3)Separate publication of different parts of draft or final records may be made under sub-section (1) or sub-section (2) for different local areas.

(4) An officer specially empowered by the State Government may, on application within one year, or on his own motion, from the date of publication of the record-of-rights under sub-section (2), revise an entry in the record finally published in accordance with the provisions of sub-section (2) after the persons interested are given an opportunity of being heard and after recording reasons therefor.

(5)[Any person aggrieved by an order passed in revision under sub-section (4) may, within such period, and on payment of such fee, as may be prescribed, appeal in the prescribed manner to the prescribed authority of the district in which the land referred to in the record-of-rights is situated:

Provided that where the appeal is preferred to a Collector, he may transfer the appeal to such officer subordinate to him as may be prescribed:

Provided further that the officer to whom the appeal is transferred is superior in rank or position to the officer or authority making the order appealed against.] .

(6)The certificate of final publication referred to in sub-section (2), or in the absence of such certificate, a certificate signed by the Collector of any district in which the area to which the record-of-rights relates is wholly or partly situate, stating that a record-of-rights has been finally published on a specified date, shall be conclusive proof of such publication and of the date thereof.

(7)The State Government may, by notification in the Official Gazette, declare with regard to any area specified in the notification that the record-of-rights for every village included in such area has been finally published and such notification shall be conclusive proof of such publication.

(8)In any suit or other proceeding in which a record-of-rights is revised or prepared and finally published under this Chapter, or a duly certified copy of the record or an extract therefrom, is produced, such record-of-rights shall be presumed to have been finally published unless such publication is expressly denied.

(9)Every entry in the record-of-rights finally published under sub-section (2) including an entry revised under sub-section (4) or corrected under section 51B or section 51BB shall, subject to any modification by an order on appeal under sub-section (5), be presumed to be correct.”

“54. Appeals.

(1)Subject to any special provisions for appeal made in this Act or in any rules made under this Act, an appeal shall lie in the manner indicated below

(a) to a Collector, when the order is made by a Revenue Officer or revenue authority below the rank of a Collector;

(b) to the Commissioner of the Division, when the order is made by the Collector of a district within the Division; and

(2) Where, at the commencement of section 22 of the West Bengal Land Reforms (Amendment) Act, 1971, any appeal is pending before the Member, Board of Revenue, such appeal shall, notwithstanding anything contained in sub-section (1) be disposed of by such Member.

(3) After any appeal is preferred to a Collector, he may transfer the appeal to any officer subordinate to him as may be prescribed :

Provided that the officer to whom the appeal is transferred is superior in rank or position to the officer or authority making the order appealed against.

(4) An order passed in appeal shall be final.

(5) Notwithstanding anything contained elsewhere in this Act, the State Government may, on its own motion, correct any erroneous decision passed by the Revenue Officer or by any officer in an appeal under the foregoing provisions of this section and any such order passed by the State Government shall be final and shall not be called in question in any court."

23. On perusal of the aforesaid two Sections it thus appears to this court that under Section 51A of the said Act of 1955 an officer empowered by the State Government (herein the Revenue Officer) is the appropriate authority for publication of the draft and final record of rights. He further possesses the power of revision of record of rights which have been published finally. If a person is aggrieved with the finding of the authority under Section 51A may prefer an appeal under Section 54 of the said Act of 1955.

24. At this juncture if I look to the order dated 10.01.2008 as passed by the appellate authority under Section 54 of the said Act of 1955 it appears to me that the said appellate authority while setting aside the order of the Revenue Officer as passed under Section 51A of the said Act of 1955 transgressed into the domain of Act of 1894 by holding that no acquisition of land took place in respect of two aforementioned Bata plots.

25. In considered view of this Court the appellate authority under Section 54 of the said Act of 1955 had got no authority to come to such a finding. In further considered view of this Court the order dated 14.06.2004 as passed by a Co-ordinate Bench in WP 25511(W) of 2004 is no way helpful to the writ petitioner since in the said writ petition the present writ petitioner was not a party and further the said Court was not made aware of the order dated 06.09.1994 as passed by the Revenue Officer under Section 51 A of the said Act of 1955 especially when at that material time the order dated 06.09.1994 was not set aside by the appellate authority.

26. This Court is satisfied that sufficient materials have been placed before this Court by both the sets of respondents that the aforementioned suit two Bata plots were the subject matter of the land acquisition proceeding which was published by a notification dated 14.10.1955. Sufficient materials have also been placed before this Court from both the sets of respondents that soon thereafter the mother plot no.1800 in the aforementioned mauja was handed over to the Executive Engineer, Construction Division (Roads) and therefore with the passage of time third

parties' interest have been created who have not been made parties in the instant writ petition.

27. This Court considers that at this juncture the relevant portion of reported decision of **Indore Development Authority** is required to be looked into which is quoted below in verbatim:-

“356. We are of the opinion that courts cannot invalidate acquisitions, which stood concluded. No claims in that regard can be entertained and agitated as they have not been revived. There has to be legal certainty where infrastructure has been created or has been developed partially, and investments have been made, especially when land has been acquired long back. It is the duty of the Court to preserve the legal certainty, as observed in Vodafone International Holdings BV v. Union of India. The landowners had urged that since the 2013 Act creates new situations, which are beneficial to their interests, the question of delay or laches does not arise. This Court is of the opinion that the said contention is without merits. As held earlier, the doctrine of laches would always preclude an indolent party, who chooses not to approach the court, or having approached the court, allows an adverse decision to become final, to reagitate the issue of acquisition of his holding. Doing so, especially in Cases, where the title has vested with the State, and thereafter with subsequent interests, would be contrary to public policy. In A.P. State Financial Corpn. v. Gar Re-Rolling Mills, this Court observed that equity is always known to defend the law from crafty evasions and new subtleties invented to evade the law. There is no dearth of talent left in longing for the undue advantage of the wholesome provisions of Section 24(2) on the basis of wrong interpretation.”

28. On perusal of the entire materials it further appears to this Court that the writ petitioner has prayed for the reliefs as made out in the prayer portion of the writ petition on the basis of the registered deed of conveyance dated 08.10.2009. It further appears to this Court that by virtue of the aforementioned registered deed of conveyance whether title in respect of the portions of the suit two Bata plots have at all been conveyed to the writ petitioner is required to be decided by trial on evidence which machinery a writ court does not possess like a civil court.

29. Admittedly from page no.25 of the writ petition it would reveal that the name of the writ petitioner was recorded in the current LRRoR but the same is no-way helpful to the petitioner in view of the fact that a record of rights is merely a document of possession and not of a title as has been decided in the reported decision of **Jitendra Singh (supra)** in the following manner:-

“6.....
Be that as it may, as per the settled proposition of law, mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose. As per the settled proposition of law, if there is any dispute with respect to the title and more particularly when the mutation entry is sought to be made on the basis of the will, the party who is claiming title/right on the basis of the will has to approach the appropriate civil court/court and get his rights crystalised and only thereafter on the basis of the decision before the civil court necessary mutation entry can be made.”

30. In view of the discussion made hereinabove the instant writ petition fails and is hereby dismissed along with all pending connected applications, if there be any.

31. Interim order if there be any, stands hereby vacated.

32. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(PARTHA SARATHI SEN, J.)

Later

After pronouncement of judgement, Mr. Chatterjee, learned advocate on behalf of the writ petitioner, prays for a limited period of stay operation of the judgement as passed today.

Prayer for stay is considered and refused.

(PARTHA SARATHI SEN, J.)