

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

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

**F.M.A. 560 of 2024
With
CAN 2 of 2024
CAN 3 of 2025**

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

For the Appellants : Mr. Abhratosh Majumder, Sr. Adv.,
Mr. Chayan Gupta
Mr. Dyutimoy Paul
Mr. Saaqib Siddiqui

For the Respondents : Mr. Ashok Kumar Banerjee, Sr. Adv.,
Mr. Tapojit Dey
Mr. Samaruddha Das
Mr. Suraj Kumar Shaw
Ms. Ishita Ghosh
Ms. Susmita Banerjee

For the State : Mr. Susovan Sengupta
Mr. Himangshu Ghosh

Heard & Judgment on : **July 18, 2025**

DEBANGSU BASAK, J.:-

1. Appeal is directed against the impugned judgment and order dated February 20, 2024 passed in W.P.A. 10678 of 2022.
2. By the impugned judgment and order, learned Single Judge allowed the writ petition of the private respondent herein. In the writ petition,

the private respondent assailed a decision dated November 24, 2020 passed by the Chairman-cum-Managing Director of the appellant, pursuant to a direction of the Appeal Court dated August 7, 2020. By the decision dated November 24, 2020, the appellants rejected the request of the private respondent dated September 13, 2019 for a non-objection in respect of part of Plot No. 5967.

3. Learned Single Judge set aside the order dated November 24, 2020 passed by the Managing Director of the appellants. Learned Single Judge directed the appellants to grant No Objection in favour of the private respondent for development of the portion of the plot of land as occupied by the private respondent in Plot No. 5967 within a period of one month from the date of passing of the order.
4. Learned senior advocate appearing for the appellants submits that the land in question stood vested with the State in an acquisition proceeding initiated under the provision of the Land Acquisition Act, 1894. He submits that the private respondent claimed to purchase the land in 2016 while the acquisition proceedings are of 2005. The private respondent is, therefore, a post vesting purchaser, if at all.
5. Learned senior advocate appearing for the appellant submits that the plot involved is Plot No. 5967. Area of the plot is 1.58 acres. Private respondent at best can claim title over 6 cottahs out of 1.58 acres. Therefore, according to him, the learned Single Judge erred in permitting the private respondent to develop the property.
6. Learned senior advocate appearing for the appellants submits that there are other owners involved in Plot No. 5967. The private respondent cannot claim to represent such other owners. At best,

private respondent can limit his claim to 6 cottahs in Plot No. 5967. He points out that in the event private respondent is allowed to construct in terms of the judgment and order impugned, then the private respondent is likely to create third party interest in respect of the property concerned. In such eventuality, it will cause immense prejudice not only to the appellants, but also to the private respondent.

7. Learned senior advocate appearing for the appellants submits that the State was not a party respondent in the writ petition filed by the private respondent. He points out that by an order dated June 13, 2025, the Appeal Court on an application for adding the State as a party respondent allowed such application. State filed a report which was considered by the Court. Court allowed the private respondent an opportunity to deal with the contents of such report in the form of an affidavit filed by the State.
8. Learned senior advocate appearing for the appellants draws the attention of the Court to the report in the form of affidavit filed by the State in this appeal. He submits that there are notices under Sections 4 and 6 of the Act of 1894 published in respect of Plot No. 5967. Therefore, according to him, there is an acquisition proceeding in respect of Plot No. 5967 as on date.
9. Learned senior advocate appearing for the appellants submits that there subsists an interim order in respect of the acquisition proceeding involving Plot No. 5967. Such writ petition is still pending and interim order passed therein still subsists. Although there is an application

for vacating the interim order passed in such writ petition, the same is yet to be disposed of.

10. Learned senior advocate appearing for the private respondent submits that the documents sought to be introduced by the report in the form of affidavit should not be considered by the Court. He refers to Order XLI Rule 27 of the Civil Procedure Code, 1908. He submits that such documents did not form part of the trial Court records. Such documents were sought to be introduced for the first time in the appeal.
11. Learned senior advocate appearing for the private respondent submits that Plot No. 5967 was never acquired by the State and therefore the question of vesting does not arise. In support of such contention, he draws the attention of the Court to the various documents annexed to the affidavit-in-opposition filed to the report in the form of affidavit of the State. He points out that Notifications issued under the Act of 1894 as well as other correspondences and submits that they do not include Plot No. 5967. Consequently, Plot No. 5967 never stood vested with the State. Therefore, learned Single Judge did not err in granting the permission as recorded in the impugned order.
12. Learned senior advocate appearing for the private respondent submits that there was no so-called second acquisition proceeding as claimed on behalf of the State. He refers to various documents in support of the contention that second acquisition proceeding is *non-est* in the eye of law. Therefore, there was no bar on the learned Single Judge to grant the permission as recorded in the impugned order.

13. Referring to the possession certificate annexed to the affidavit-in-opposition to the report in the form of affidavit of the State, learned senior advocate appearing for the private respondent submits that possession of Plot No. 5967 was never taken. Therefore, the question of such plot vesting with the State does not arise.
14. Learned senior advocate appearing for the private respondent draws the attention of the Court to the Notification dated February 10, 2005 under Section 4 of the Act of 1894 and submits that Plot No. 5967 is not included in such Notification. He also refers to the letter dated November 23, 2004 issued by the Special Secretary of the State of West Bengal to the Land Acquisition Collector and submits that several plots were released from the acquisition process.
15. Learned senior advocate appearing for the private respondent relies upon **AIR 1987 SC 537 (The Comptroller and Auditor General of India, Gian Prakash, New Delhi & Anr. Vs. K. S. Jagannathan)** submits that a High Court exercising powers under Article 226 of the Constitution of India is entitled to pass orders and give necessary directions where the Government or a Public Authority fails to exercise or wrongly exercises its discretion conferred upon it by a Statute or Rule or a policy decision of the Government or exercises such discretion *mala fide* or on irrelevant consideration or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing such discretion.

16. Learned advocate appearing for the State submits that the land-in-question stands acquired as appeared from the report in the form of affidavit submitted in Court.
17. Private respondent approached the Writ Court by way of WPA 10678 of 2022 in which the impugned judgment and order was passed.
18. In the writ petition, the private respondent claimed that the writ petitioner filed a writ petition being W.P. No. 5884 (W) of 2020. Such writ petition was disposed of by an order dated August 7, 2020. Aggrieved by the decision therein, private respondent filed an appeal being M.A.T. 579 of 2020 which was disposed of on October 14, 2020 directing the Chairman-cum- Managing Director of the appellants to consider and take a decision with regard to the application of the writ petitioner dated September 13, 2019.
19. Pursuant to the direction of the Appeal Court, the Chairman-cum-Managing Director of the appellant passed a reasoned order dated November 24, 2020 rejecting the prayer of the private respondent. Being aggrieved by such decision, private respondent filed the present writ petition in which the impugned judgment and order was passed.
20. Private respondent claims himself to be an owner of 6 cottah of land comprised in Plot No. 5967.
21. Rival contentions between the parties raise the issue as to whether or not Plot No. 5967 is a subject matter of an acquisition proceeding under the Act of 1894.

22. State was not a party respondent in the writ petition filed by the private respondent in which the impugned judgment and order was passed. Appellants before us claim to be the beneficiaries of the acquisition proceedings undertaken by the State in respect of several plots of land. Plot of land concerned is within the New Town Project. New Town Project envisaged acquisition of several plots.
23. Since State was not a party in the writ petition, in the appeal and on an application filed in this regard, we added the State as a party respondent and permitted the State to file a report in the form of affidavit. Such order was passed on June 13, 2025 in presence of the private respondent.
24. State after being added as a party respondent in the appeal filed a report in the form of an affidavit annexing various documents. The report in the form of affidavit filed by the State was allowed to be dealt with by the private respondent by filing an affidavit. Private respondent filed an affidavit dealing with the report in the form of affidavit of the State.
25. Report in the form of an affidavit of the State refers to various documents. One of the documents is a notification dated November 20, 1998 issued under Section 4 of the Act of 1894 in respect of several plots of land and plot no.5967 appears in such notification. There is a notification dated October 14, 1999 under Section 6 of the Act of 1894 in respect of several plots of land and plot no.5967 is also there.
26. Therefore, in respect of plot no.5967, there are notifications under Sections 4 and 6 of the Act of 1894. Appellants before us are

beneficiaries of acquisition proceeding. There is no material placed on record to disprove that, there was no notification under Section 4 of the Act of 1894 or under Section 6 of the Act of 1894 were published in respect of plot no.5967.

27. It is the contention of the private respondent several documents were sought to be introduced in the appeal and that such documents were not before the learned Single Judge. Introduction of documents is sought to be made without adhering to the procedure prescribed under Order XLI Rule 27 of the Code of Civil Procedure, 1908.
28. With respect, we are unable to accept such contention advanced on behalf of the private respondent since, the writ petition which was filed by the private respondent, did not arraign the State as party respondent although, in our view, State is both a necessary and proper party in such writ petition. Absence of the State therefore, will sound on the quality of the prayers made in the writ petition and the grant thereof.
29. State was added as a party respondent in the present appeal and allowed to file a report in the form of an affidavit which disclosed various documents. Private respondent was allowed an opportunity to file an affidavit dealing with the documents relied on by the State.
30. Code of Civil Procedure, 1908 in all its rigours does not apply to a writ proceeding. Nonetheless, principles thereof apply. In the present case, State was not a party to the writ petition. In the appeal it was added and allowed to file documents in view of the rival contentions of the appellants and the private respondent. Private respondent was allowed to deal with such documents. Principles of

natural justice stood complied with. Objections under Order XLI Rule 27 cannot be sustained.

31. Essentially, we took note of two documents which the State produced in the report in the form of an affidavit namely, notifications under Sections 4 and 6 of the Act of 1894 relating to plot no.5967. The private respondent, despite an opportunity to file an affidavit deal with such report in the form of an affidavit did not produce any document to disprove such two notifications. The private respondent relies upon other notifications which do not relate to the plot no.5967. Therefore, on the strength of the documents disclosed by the private respondent, it cannot be said that, plot no.5967 was not under acquisition proceeding under the Act of 1894. That apart, plot no.5967 forms part of the earlier writ petition being W.P. 21509 (W) of 2000 in which there subsists an interim order.

32. In any view of the matter, therefore, it cannot be said that, plot no.5967 is not the subject-matter of an acquisition proceeding undertaken by the State.

33. We are not invited to speak upon the legality, validity and sufficiency of the acquisition proceeding in respect of plot no.5967. It is the subject-matter of a writ petition which is pending before the learned Single Judge. We clarify that, none of our observations will be construed to mean that we pronounced on the legality, validity and sufficiency of the acquisition proceeding in respect of such plot.

34. Private respondent herein, as one of the writ petitioners in W.P.21509 (W) of 2000 assailed the acquisition proceeding in respect of plot in question. In such writ petition an interim order directing the

parties to maintain *status quo* was passed on May 2, 2001. There is an application filed on behalf of the State for vacating such interim order which is yet to be disposed of.

35. Subsisting interim order passed in W.P. 21509 (W) of 2000 dated May 2, 2001, prohibits the State from taking further steps under the provisions of the Act of 1894.

36. None of the parties before us claim that plot no.5967 is not forming part of the subject-matter of W.P.21509 (W) of 2000. Therefore, State suffered a legal inability to continue with acquisition proceeding under the Act of 1894 by dint of an interim order passed by the High Court.

37. At this stage, therefore, one cannot pronounce as to the validity, legality and sufficiency of the acquisition proceeding in respect of plot no.5967. Fact remains that, acquisition proceeding under the Act of 1894 was initiated in respect of plot no.5967 up to Section 6 of the Act of 1984 stage. Neither the award could be passed nor the possession could be taken in view of the subsisting interim order. Justification of not passing the award is also on the subsisting interim order. Justification offered cannot be said to be moon shine.

38. In view of such factual matrix, the right of the private respondent in respect of the plot in question is yet to crystallize finally. Significantly, the writ petitioner is a purchaser subsequent to the notification under Section 6 of the Act of 1894. In the event, the writ petition being W.P. 21509 (W) 2000 is dismissed, then, State will be entitled to proceed with the acquisition proceeding in accordance with the law. In the event, State proceeds with the acquisition proceeding,

then, the right, title and interest of the private respondent in respect of 6 cottahs in the plot concerned becomes debatable.

39. **K. S. Jagannathan and another (supra)** dwell upon the power of the Writ Court under Article 226 of the Constitution of India. It prescribes that High Court can intervene where there is gross injustice meted out by the Article 12 Authorities.

40. In the facts and circumstances of the present case, since the claim of the private respondent is debatable particularly its right, title and interest in respect of 6 cottah out of 1.58 acres of plot no.5967, we are not in a position to sustain the impugned judgment and order where it permits the private respondent to develop the property and direct the appellants before us to grant no objection for such development. Permission to such extent, if granted, will allow the private respondent to create third party right title and interest in respect of the property over which the right, title and interest of the private respondent itself is debatable. At least, at this stage, one can safely infer that claim of title is inchoate and yet to be crystallized.

41. In view of the discussions above, impugned judgment and order is set aside.

42. **F.M.A. 560 of 2024** alongwith all connected applications stand **disposed of** without any order as to costs.

(Debangsu Basak, J.)

43. I agree.

(Md. Shabbar Rashidi J.)