

11.07.2025
Sl. No. 12
g.b.
Court No.24

W.P.A. 9180 of 2024

Vivek Bose
-Vs-
The State of West Bengal & Ors.

Mr. Pankaj Halder
Mr. Subhendu Bhattacharya
Mr. Sanatan Patra
Mr. Tapas Manna
.....For the Petitioner
Mr. Ashok Kr. Banerjee, Sr. Advocate
Mr. Satyajit Talukdar
Mr. Arindam Chatterjee
....For the KMDA
Mr. Joydeep Kar, Sr. Advocate
Mr. Sirsanya Bandhapadhyay
Mr. Chandi Charan De
Ms. Sonal Sinha
Mr. Anirban Sarkar
Ms. Shabnam Farooqui
.....For the State
Mr. Tapas Kr. Sinha
.....For the Respondent Nos. 8 and 9

Petitioner's father, namely, Paramananda Bose was absolute owner of the Premises No. 21, Chetla Central Road, Kolkata – 700 027. He submitted a return under Section 6 of Urban Land (Ceiling and Regulation) Act, 1976 before the competent authority. The competent authority has prepared a draft statement under Section 8 (1) of the said Act and served upon Paramananda Bose. Said Paramananda Bose raised objection under Section 8 (3) of the said Act before the

authority. On such objection a hearing was done by the competent authority. By an order dated 23rd of July, 1980 the competent authority has held that Paramananda Bose has held an area the ceiling limit of vacant land measuring 2524.60 sq. meter. Against such order the said Paramananda Bose preferred a writ petition thereby on the direction of the writ court an appeal has been preferred under Section 33 of the said Act, 1976. The appellate authority has heard Paramananda Bose and disposed of the appeal by passing an order dated 16th of November, 1988. Thereby it has been ordered by the appellate authority that an area of 802.96 sq. meter of excess vacant land at premises no.21, Chetla Central Road is held by Paramananda Bose. Thereafter the competent authority had proceeded to issue final statement under Section 9 of the said Act.

Paramananda Bose, father of the petitioner challenged the said order passed by the appellate authority as well as the statement under Section 9 of the competent authority through a writ petition

being W. P. No. 1504 of 1999. During the pendency of the said writ petition a Co-ordinate Bench of this Court has dismissed the writ petition for default by an order dated 21st September, 2003 as no one appeared on behalf of the petitioner on the date of hearing. It is the case of the petitioner that the father of the petitioner Paramananda Bose executed deed of sale in favour of Fighters Loding Syndicate Pvt. Ltd. through a registered deed of sale.

It is the contention of the petitioner that the order passed by the appellate authority in appeal case no. 47 of 1981 under Section 33 of the said Act is illegal and required to be set aside.

Learned counsel appearing on behalf of the State authority submits that there is no reason before this court to entertain the writ petition filed after a long period of time. He further submits that the order was passed in the year 1988 and it has been now challenged in the year 2024. He further submits that father of the petitioner though challenged the order by filing a writ petition being W. P. 1504 of 1999 but it was dismissed for

default; without setting aside or recalling the order of dismissal. This court cannot entertain the writ petition.

Having heard the learned counsel for the parties it appears that the order of appellate authority passed under Section 33 of the said Act, 1976 is under challenge by the petitioner in the year 2024.

Truly speaking I find no merit or pleadings in the writ petition to justify how the petitioner came after so long time before this court to challenge an order passed by a competent authority under Section 33 of the said Act.

Learned counsel for the petitioner submits that if the petitioner was thrown out from this court, he would be non-suited.

Considering the submission I proceeded to hear the petitioner. The merit of the petitioner to challenge the order of the appellate authority is that the appellate authority has not considered the definition of “vacant land” as enumerated under Section 2(q) of the said Act, 1976. It is the contention of the petitioner that at the time of

making objection his father has submitted that there was a structure over the land in question. Thus, the land cannot be said to be a vacant land. The definition of vacant land under Section 2(q) of the Urban Land (Ceiling and Regulation) Act, 1976 is set out as follows:

“(q) “Vacant land” means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include-

- (i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;
- (ii) in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and
- (iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building;

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of live-stock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purposes of this clause.”

After perusal of the observation of the competent authority in the instant case it appears that during local enquiry some temporary structure measuring 10 sq. meter was located by the competent authority. It was observed by the competent authority that the said structure was constructed without any approval of the Kolkata Municipal Corporation. The said structure can be termed as a vacant land. The father of the petitioner has initially raised objection that the said vacant land comprising of a temporary structure belongs to Premises No. 19, Chetla Central Road. However, the competent authority

in the first instance has observed that the said portion of the land of the father of the petitioner appertains to Premises No.21, Chetla Central Road. During the appeal the father of the petitioner never challenged the said finding, only the area of vacant land was in question.

However, after hearing the parties the appellate authority has conceded the submission of the father of the petitioner and has held that only 802.96 sq. meter of excess vacant land is within at the Premises No. 21, Chetla Central Road.

So, it appears that the issue which was not raised by the father of the petitioner during the appeal, now the present petitioner being the son of the appellant cannot allowed to raise. During pendency of litigation when one issue was not raised or challenged in the appeal, cannot be raised further in the later stage.

On that score the merit as argued by the learned counsel for the petitioner is not tenable in law.

Accordingly, I find no justification to entertain the writ petition.

Accordingly, the instant writ petition is dismissed as meritless.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on urgent basis after completion of all necessary formalities.

(Subhendu Samanta, J.)