

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

Present:

The Hon'ble Justice Partha Sarathi Sen

**WPA 12900 of 2014
With
CAN 1 of 2018 (Old No. CAN 6888 of 2018)
With
CAN 2 of 2018 (Old No. CAN 6889 of 20185)**

**Shree Garden Resort Pvt. Ltd. Co. & Anr.
Vs.
The State of West Bengal & Ors.**

For the petitioners : Mr. Goutam Kumar Das
Mr. Indranuj Dutta
Ms. Benazir Sk

For the State : Mr. Lalit Mohan Mahata
Mr. Prasanta Behari Mahata

For the respondent No. 7 : Mr. Rudra Sankar De

Heard on 20.02.2025

Judgment on : 20.02.2025

PARTHA SARATHI SEN, J.:

1. By filing the instant writ petition the writ petitioners have prayed for issuance of a writ of mandamus against the respondent authorities from giving effect to the registered deed of lease dated

06.09.2012 as has been executed by and between the lessor that is the West Bengal Industrial Development Corporation Limited, the respondent no. 7 herein and the lessee Ganapati Flour and Fruits (P) Ltd. that is the respondent no. 8 herein with further prayers namely; directing the respondents not to set up any commercial unit like flour mill/atta mill, accessories, spare parts and wheat products, etc. in the land of the writ petitioners, for injunction restraining the respondents from interfering with the possession of the lands of the writ petitioners and for other ancillary reliefs.

2. In course of hearing Mr. Das, learned advocate appearing on behalf of the writ petitioners at the very outset draws attention of this Court to page nos. 36 to 39 of the of the instant writ petition being a copy of the relevant notification under Section 4 of Act I of 1894 as published by the Government of West Bengal in connection with LAP case no. 14/2006-07. It is submitted by Mr. Das that from internal page nos. 3 and 4 of the said notification it would reveal that plot no. 86 and Bata plot no. 86/332 in Mouza-Raisanda which belong to the writ petitioners are within the schedule of the said notification for acquisition. Drawing further attention to page nos. 40 to 43 it is submitted further on behalf of the writ petitioners that subsequently a declaration under Seciton 6 of the Act I of 1894 was made by the Government of West Bengal wherein the aforementioned two plot numbers were included.

3. It is further submitted by Mr. Das from the aforementioned two notifications it would reveal that the said acquisition process was made for public purpose only, however, in gross violation of the said pious purpose the respondent authorities had executed the said deed of lease dated 06.09.2012 to the private respondent no. 8. It is submitted further that both the State as well as the respondent no. 7, i.e., the West Bengal Industrial Development Corporation Limited (hereinafter referred to as the 'said Corporation' in short) had practically deviated the very purpose for which acquisition was made and, therefore, appropriate relief/reliefs may be granted to the writ petitioners pursuant to the prayers made in the writ petition.
4. In course of his submission Mr. Das places his reliance upon the following reported decisions namely, ***Shyam Behari & Ors vs. the State of Madhya Pradesh & Ors.*** reported in ***AIR 1965 Supreme Court 427***, ***Royal Orchid Hotels Ltd. & Anr. Vs. G. Jayarama Reddy & Ors.*** reported in ***(2011) 10 SCC 608*** and ***Anil Agarwal Foundation Etc. Etc. vs. State of Orissa & Ors.*** reported in ***2023 LiveLaw (SC) 300***.
5. In course of his submission Mr. Das submits that in the aforementioned three reported decisions it has been consistently held by the Hon'ble Supreme Court that in the event an acquisition has been done for a public purpose and by utilizing public money

the acquired land cannot be disbursed in favour of a private individual or a private company for their commercial exploitation and, therefore, the acquisition proceeding ought to have been set aside keeping in mind the very basic principles of public policy.

6. Per contra, Mr. Mahata, learned advocate appearing on behalf of the respondent/State also draws attention of this Court to the aforementioned two notifications which have been annexed at page nos. 36 and 40. It is submitted by Mr. Mahata that from the said two notifications it would reveal that the very purpose of acquisition proceeding was for a public purpose and at the public expense.
7. While drawing attention to the affidavit-in-opposition as filed by the respondent nos. 1 to 4 it is submitted by Mr. Mahata that it is the specific case of the respondent nos. 1 to 4 that is the State and its functionaries that in connection with LAP no. 14 of 2006-07 corresponding to Act I LA case no. 11-2007-08 a total area of 84.135 acres of land was acquired which includes plot nos. 86 and 86/332 at Mouza-Raisanda. It is further submitted by Mr. Mahata that the said notifications were published in two daily widely circulated newspapers and thereafter the award was declared and approved by the collector on 30.05.2008 and payment of land compensation for acquisition was made on 18.06.2008, 19.06.2008 and 20.06.2008 and out of the awardee of the said land acquisition

proceeding, one Bibek Bajoria was awarded compensation in respect of Plot No. 86 and Bata Plat No. 86/332 and the said Bibek Bajoria was the then Managing Director of the writ petitioner no. 1 company.

8. In his next limb of submission, Mr. Mahata further submits that since at the time of the acquisition proceeding, the name of Bibek Bajoria transpired in the record of right in respect of the aforesaid two plots of land, award of compensation was passed in the name of Bibek Bajoria and, therefore, the present petitioners have got no locus standi to file the instant writ petition and to challenge the acquisition proceeding which has been done in accordance with law.
9. In course of his submission, Mr. Mahata further submits that the acquisition proceeding which is subject matter of the instant writ petition was also the subject matter in the reported decision of **Dr. Bimal Kumar Raj & Ors. Vs. The State of West Bengal & Ors.** reported in **2019 (3) CLJ (Cal) 454** wherein a co-ordinate Bench found no illegality or irregularity in the said acquisition proceeding and thus while rejecting the writ petition filed by the writ petitioner of the said case practically upheld the process of the acquisition proceeding under LAP Case No. 14/2006-07 corresponding to LA Case No. 11/2007-08.

10. It is further submitted that a Division Bench of this Court by its judgment and order dated 14.07.2023 in FMA 540 of 2020 (**Sri Monoranjan Ghosh and Another Vs. State of West Bengal and Others**) affirmed the view taken in the case of **Dr. Bimal Kumar Raj** (*Supra*). It is further submitted by Mr. Mahata that from the aforesaid two notifications i.e., under Sections 4 and 6 of the Act I of 1894, it would reveal that the said acquisition proceeding was initiated for the purpose of setting industrial units and, therefore, the lease deed as has been executed by the respondent no. 7 in favour of the private respondent no. 8 cannot be considered for a purpose other than the purpose for which acquisition was made as has been wrongly claimed by the writ petitioner.
11. Mr. De, learned advocate appearing on behalf of the respondent no. 7 being the requiring body i.e., the said corporation also draws attention of this Court to the affidavit-in-opposition of the respondent no. 7 as affirmed on 18.03.2024. Mr. De, in course of his submission took me to page nos. 3, 4, 5 and 6 of the said affidavit-in-opposition. It is submitted by Mr. De that the respondent no. 7 being the requiring body took part in the development project at the acquired land for implementation of the Socio-Economic Development Policy of the State and in doing so, it tied up with Telcon & Allied Industrial Units (a company for manufacturing of machineries). It is further submitted by Mr. De

that the respondent no. 7, thereafter, set up an Industrial Park on such acquired land by the name of 'Vidyasagar Industrial Park' where it accommodated various companies on execution of deeds of lease upon receipt of consideration at the market rate with the sole object for development of Socio-Economic condition of the State as well as for generation of employment for the youths of the State of West Bengal.

12. It is thus submitted by Mr. De that by no stretch of imagination, it can be said that the deed of lease was executed for any other purpose as has been mentioned in the said two notifications.
13. This Court has meticulously gone through the entire materials as placed before this Court. This Court has also given its anxious consideration over the submissions of the learned advocates for the contending parties.
14. On perusal of the prayer portion of the writ petition, as has been discussed hereinabove also, it appears to this Court that the writ petitioner has prayed for an appropriate writ against the respondents/authorities for not giving effect to the deed of lease dated 06.09.2012 as has been executed by and between the respondent no. 7/Corporation and the private respondent no. 8.
15. In considered view of this Court that the relief as claimed in the writ petition does not come under the purview of the writ Court since it is a settled law that in the event, a party intends to avoid a

registered deed of lease which according to him is going to affect his right, title and interest, his remedy lies at the Common Law Forum since a civil court has machinery and power to determine a person's right, title and interest over a property by recording of evidence and by exhibiting documents. Though the respondent no. 8 is not represented today, this Court has occasion to go through the affidavit-in-opposition as filed by the respondent no. 8 wherefrom it reveals that the present writ petitioner filed Title Suit No. 16 of 2013 against the private respondent no. 8 in the Court of Civil Judge, Junior Division, 2nd Court, Medinipur with a prayer for decree for declaration and other ancillary reliefs in respect of Plot No. 86 and Bata Plot No. 86/332.

16. This Court thus considers that since the writ petitioner has already approached the Civil Court by availing alternative remedy i.e., by filing of Title Suit No. 16 of 2013, this Court must refrain itself from passing any order of restraint over the self-same lease deed in respect of self-same plots of land since the same may have an adverse effect over the judgment which is proposed to be passed in the said title suit.
17. This Court thus holds that on this score, the instant writ petition is not maintainable.
18. For the sake of argument, even if it is accepted that the present writ petition is otherwise maintainable, it appears to this Court that

sufficient materials have been filed by the respondent/State as well as the respondent no. 7/Corporation that land acquisition was made in accordance with the provisions of Act I of 1894. Sufficient materials have also been placed to substantiate that such acquisition proceeding was initiated for employment generation and Socio-Economic Development of the area. It appears to this Court that immediately after completion of the acquisition proceeding and determination of quantum of compensation payable to the land losers and disbursement thereof the entire acquired land was handed over to the respondent no. 7 being the required body.

19. The respondent no. 7/Corporation, thereafter, developed the said land with the help of and/or by engaging infrastructural development agency and, thereafter, started distribution of the said land plotwise to different industrial units one of whom is the private respondent no. 8.
20. Such being the position, this Court considers that by no stretch of imagination, it can be said that the very purpose of acquisition proceeding was frustrated either at the instance of the respondent/State or at the instance of the respondent no. 7.
21. In the reported decision of ***Shyam Behari and Others*** (*Supra*) as cited on behalf of the writ petitioner, it has been held by the Hon'ble Apex Court that no declaration under Section 6 of the Act I of 1894 can be made unless either the whole or the part of the

compensation for the property to be acquired is to come out of public revenues or some funds controlled or managed by the local authority. It has been held further that no notification under Section 6 can be made where the entire compensation is to be paid by a company declaring that acquisition is for a public purpose, for such a declaration requires that either wholly or in part, compensation must come out from public revenues or some funds controlled and managed by local authority.

22. In the reported decision of ***Royal Orchid Hotels Ltd.*** (*Supra*) Hon'ble Supreme Court where dealing with a case of land acquisition proceeding, expressly held that if diversification of land is made for a private purpose, it amounts to fraudulent exercise of the power of eminent domain.
23. In the reported decision of ***Anil Agarwal Foundation*** (*Supra*), it has been held by the Hon'ble Apex Court that no undue benefits should be given to a private individual or a company by allotting land when the entire acquisition proceeding was done for the benefit of public at large and therefore, such an action of the Government is vitiated by favouritism and violative of Article 14 of the Constitution of India.
24. In considered view of this Court none of the three reported decisions has any manner of application, inasmuch as, it has been established before this Court both by the respondent/State as well

as by the respondent no.7/Corporation, that is, the requiring body that the very purpose of acquisition which is the subject matter of the instant matter was for socio-economic development of the area and generation of employment by setting up industrial units on the acquired land.

25. Materials have been placed before this Court that after acquisition proceeding and after disbursement of compensation, the acquired land was handed over to the respondent no.7/Corporation who with the help of various infrastructural development company set up 'Vidyasagar Industrial Park' on such acquired land and one of such beneficiaries is the private respondent no.8, in whose favour the said deed of lease dated September 6, 2012 was executed.
26. This Court, thus, finds no illegality and/or irregularity on the part of the respondent authorities, more specifically against the respondent no.7 in executing the deed of lease.
27. This Court is in agreement with the submission of Mr. Mahata that while making an enquiry with regard to the ownership of the acquired land, the Land Acquisition Collector is only to make a roving enquiry and to ensure that the notices were served upon the recorded owners as per the record of rights as has been decided in the case of **West Bengal Housing Board and Others versus Brijendra Prasad Gupta and Others** reported in **1997(II) CHN (SC) 33**.

28. This Court further noticed that the recorded owner of the aforesaid two plots, that is, Plot No.86 and Bata Plot No.86/332 was awarded with the compensation and since the writ petitioners' name were not there at the time of the said acquisition proceeding, the writ petitioners' name found no place/places in the list of awardees, though such contention was raised at a subsequent stage by filing a supplementary affidavit by the writ petitioners.
29. This Court, thus, finds that the instant writ petition is basically mischievous, harassing and has been filed with sole motive to stall the process of development as initiated by the respondent/State.
30. In view of such, this Court holds that the instant writ petition is devoid of any merit and is dismissed with cost of Rs.1,00,000/-, which is to be deposited within a month from today with the office of the State Legal Services Authority, Government of West Bengal.
31. Department is directed to forward a copy of this judgment to the Member Secretary, State Legal Services Authority, 2 and 3, K. S. Roy Road, 1st Floor, Kolkata - 700001 who on receipt of such cost shall credit the same in the fund dedicated for 'Victim Compensation Scheme'.
32. Interim order as passed earlier in connection with the instant writ petition stands vacated. All pending interlocutory applications are also disposed of.

33. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(PARTHA SARATHI SEN, J.)