

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2214 of 2016

Sri Probodh Chandra Roy & Anr.

Versus

The State of West Bengal & Another

For the Petitioners : Mr. Apalak Basu, Adv.
Ms. Sanghamitra Mridha, Adv.

For the State : Ms. Faria Hossain, Adv.
Ms. Sujata Das, Adv.

Heard on : 14.11.2024

Judgment on : 10.01.2025

Ajay Kumar Gupta, J:

1. An application under Section 482 of the Code of Criminal Procedure, 1973 has been filed at the instance of the accused persons/petitioners herein seeking quashing of the Charge Sheet No. 77 dated 31st January, 2014 under Section 4D of the West Bengal Land Reforms Act, 1955 arising out of Sonarpur P.S. Case No. 582 of 2013 (G.R. Case No. 2476 of 2013).

2. The brief facts of the instant case according to the petitioners are that petitioner no. 1 purchased a land under Mouza – Karimpur under Sonarpur Police Station in the District of South 24 Parganas in the year 1991. Petitioner no.1 applied for Building Plan in the purchased plot and after getting the Plan sanctioned from Gram Panchayat, as per Panchayat Act, constructed a two storied building in the said plot. There was /is no water body in the land-in-question or its surroundings or its vicinity where the petitioners purchased the land. Petitioner no. 2 being the wife of the petitioner no. 1 has no connection with the said plot of land in question or construction thereof.

3. Due to old age, the petitioners sold the aforesaid building in the month of December, 2014 and for their convenience purchased a flat in the same apartment for their daughter.

4. Allegations made by complainant, the Block Land & Land Reforms Officer, Sonarpur Block to Inspector-in-Charge, Sonarpur Police Station, inter alia, that a news published on 23rd May, 2013 in the daily newspaper “Bartaman” and subsequently a direction was issued by the Sub Divisional Officer, Baruipur on 24th May, 2013 and on the basis of further enquiry was held on 24th May, 2013 for the same plot in question is found recorded in the name of the Collector, South 24-Parganas/different rayat. Plots are not part of East Kolkata Wetland area, and the complainant requested the police authorities to keep the constant vigil, so that illegal activities should be stopped immediately over the plots of land.

5. It was further case of the petitioners that the Block Land & Land Reforms Officer, Sonarpur Block requested the police authorities to take stern action against the miscreants, who are trying to change the classification of land without any prior permission from the respective authorities, and he encroached the three plots of land being Plot No. 45 of Mouza Karimpur and Plot No. 46 of Mouza Karimpur, recorded as “SALI” and another Plot No. 136 of Mouza – Deyara as “BIL” and the police authority after enquiry, filed Charge Sheet without proper investigation and proper verification the law.

6. In the said proceedings, none of the plot holders of the aforesaid three plots were made accused. However, petitioners herein were made accused though they are not the owners of the aforesaid three plots and reason for making them accused in the aforesaid case is unknown to them. Despite the said facts, the petitioners surrendered before the Learned Court and were released on bail upon furnishing PR bond of Rs. 1000/- by the Learned Additional Chief Judicial Magistrate, Baruipur, South 24 Parganas. From the Parcha, there is no Wet land found within the area where the petitioner no. 1 had purchased land . Hence, this Criminal Revisional application.

SUBMISSION ON BEHALF OF THE PETITIONERS:

7. Learned counsel appearing on behalf of the petitioners filed written notes of arguments and the same has been taken on record.

8. It was further argued and submitted that the petitioners are no way connected with the instant case and they have been falsely implicated into this case. As per the relevant Act, the police authority has no right to file complaint under Section 4D of the West Bengal Land Reforms Act, 1955. Only Collector (District Magistrate) has authority to take action if anybody violates the order of Collector under Sub-Section 5 of Section 4C of the West Bengal Land Reforms Act, 1955. Therefore, procedure under Section 4C has not been

followed by the District Magistrate being Collector or by the Block Land & Land Reforms Officer. Furthermore, the police authority has given the particulars of three plots in which the petitioners have no connection.

9. Before lodging complaint, no opportunity of hearing was given as per Section 3C of the West Bengal Land Reforms Act, 1955 and Rules framed thereunder and without any basis, the Investigating Officer mechanically and only on the table work submitted charge sheet without going into the details of the petitioners case. Only on the basis of name plates found in the building, they have been implicated into this case and finally charge sheet has been submitted.

10. During investigation, the Investigating Officer has not ascertained the genuine facts to uncover the truth of the allegation made in the FIR. Apart from that, there is no single or any credible evidence found against the petitioner no. 2 indicating that she has committed any offence as alleged. Therefore, petitioner no. 2 cannot be held liable for the offence in question because of her marital status with the petitioner no. 1 only. Therefore, the charge sheet and the proceeding thereof are liable to be quashed.

11. Learned counsel further placed reliance of two judgments in support of his contentions that filing of the complaint on the name of petitioner no. 2 solely based on her marital relationship with petitioner no. 1 cannot justify the continuation of any proceedings against her as under:

i. Madhavrao Jiwajirao Scindia and Others vs. Sambhajirao Chandrojirao Angre and Ors.¹;

ii. Birla Corporation Ltd. Vs. Adventz Investments and Holdings Ltd. and Ors.².

SUBMISSION ON BEHALF OF THE STATE:

12. Per contra, learned counsel appearing on behalf of the State vehemently opposed the prayer of the learned counsel appearing on behalf of the petitioners and submitted Smt. Jharna Roy is the wife of Sri Probodh Chandra Roy, petitioner no. 1. It is also drawn attention by the learned counsel that during the pendency of this case, the petitioner no. 1/accused no. 1, Sri Probodh Chandra Roy had expired on 22.09.2018 and in that event, a report was called for and finally

¹ (1998) 1 SCC 692.

² (2019) 16 SCC 610.

his case has been abated. Therefore, the petitioner no. 2 is the only petitioner herein in this case.

13. Learned counsel further produced the case diary and submitted that the Block Land and Land Reforms Officer, Sonarpur, South 24 Parganas is the authorised person as such he had lodged the written complaint regarding the illegal activities was going in the East Calcutta Wet Land area. The Plots in question are recorded in the name of Collector, South 24 Parganas/different rayats and as well as these plots are under East Calcutta Wet Land area where some constructions were already made. During enquiry, it reveals in plot nos. 46 and 45 and LR Plot No. 136 found some construction over there which is not at all permissible in law. During investigation, in one of the premises, the name of Probodh Chandra Roy and Jharna Roy found in the name plate. They were very much involved in the act of illegal construction work on the Wet Land, Government of West Bengal, Collector, South 24-Parganas. Therefore, charge sheet has been rightly submitted under Section 4D of the West Bengal Land Reforms Act, 1955 against the accused persons. Therefore, the case is liable to be dismissed.

DISCUSSIONS AND FINDINGS BY THIS COURT:

14. Heard the arguments of the rival parties and upon perusal of the case diary as well as record, it appears that the petitioner no. 1's case has been got abated after his death whereas it appears from the supplementary affidavit filed by the petitioner no. 2 stating therein that she is a lady about 76 years suffering from various old age ailments and practically confined to her bed. The petitioner is also suffered from serious cardiac ailment and she has been undergoing treatment on day to day basis. She had no role to play under the alleged offences merely being the wife of Probodh Chandra Roy. She cannot be implicated into this case only on the basis of sign board which otherwise did not seize by the Investigating Officer. The petitioner has been implicated on the basis of mistaken identity as her husband was a rayat in respect of the landed property. Though, there is nothing on record to suggest the involvement of the petitioner no. 2 to attract Section 4D of the West Bengal Land Reforms Act, 1955. No specific role has been attributed against the present petitioner in the document supplied by the Investigating Officer in terms of Section 207 of the Code of Criminal Procedure, 1973.

15. From the perusal of statement recorded under Section 161 of the CrPC of the various witnesses, none of them have named the

petitioner no. 2. Therefore, she is not liable for any offence fall under Section 4D of the West Bengal Land Reforms Act, 1955 as alleged by the complainant. No materials were collected during the investigation against the petitioner no. 2.

16. Before deciding the issue herein, this Court would like to refer the Sections as follows:

Section 4C of the West Bengal Land Reforms Act, 1955

reads as under:-

“4C. Permission for change of area, character or use of land.- (1) *A raiyat holding any land may apply to the Collector for change of area of character of such land or for conversion of the same for any purpose other than the purpose for which it was settled or was being previously used or for alteration in the mode of use of such land.*

Explanation.- For the purposes of this sub-section, mode of use of land may be residential, commercial, industrial, agriculture excluding plantation of tea, pisciculture, forestry, sericulture, horticulture, public utilities or other use of land.

(2) *On receipt of such application, the Collector may, after making such inquiry as may be prescribed and after giving the applicant or the persons interested in such land or affected in any way an opportunity of*

being heard, by order in writing either reject the application or direct such change, conversion or alteration, as the case may be, on such terms and conditions as may be prescribed:

Provided that where the application as stated in sub-section (1) relates to permission for change, conversion or alteration of any plot of land having water body of any description or size, the Collector shall not make any order, unless he has made a prior consultation in writing with such appropriate Department of the State Government as may be prescribed and such order of the Collector may, depending on the circumstances of case, include an order for creation of compensatory water body of equal or larger size of such water body which is required to be changed, converted or altered.

(3) Every order under sub-section (2) directing change, conversion or alteration shall specify the date from which such change, conversion or alteration shall take effect.

(4) A copy of the order passed by the Collector directing change, conversion or alteration, if any, under sub-section (2), or in an appeal therefrom shall be forwarded to the Revenue Officer referred to in section 50 or section 51, as the case may be, and such Revenue Officer shall incorporate in the record-of-rights changes effect by such order and revise the record-of-rights in accordance with such order.

(4A). Notwithstanding anything to the contrary contained in any other law for the time being in force, where the approval of the appropriate Department of the State Government or the local authority in respect of construction of buildings or any other permission to conduct any business or carrying on any activity-

(a) involves change of area of any plot of land or character of such plot of land or conversion of the same as mentioned in sub-section (1); or

(b) amounts to using of any plot of land having any water body of any description or size in a manner that degrades or destroys, directly or indirectly, such water body, no such approval or permission of the appropriate Department of the State Government or the local authority shall be made unless the order of the Collector directing change, conversion or alteration of such plot of land or plot of land having any water body of any description or size, as the case may be, under sub-section (2), is obtained.

(5) (a) Without prejudice to the foregoing provisions of this section, where any plot of land has been changed or converted or altered in violation of this section, if the Collector, on his own motion or on receiving information, is of the opinion that it is necessary so to do in public interest, he may make an order directing a raiyat or a lessee for restoration of the original character of the concerned land within a specified time.

b) on receipt of the order , the raiyat or the lessee shall restore the original character of the plot of land at his own cost within : within such time, as may be ordered by the Collector.

(c) If the raiyat or lessee fails to comply with the order, the Collector may take action for restoring the original character of such plot of land and realise the cost for restoration from the raiyat or the lessee.

(d) If the raiyat or lessee fails to pay the cost of restoration, the Collector may realise the cost as a public demand in accordance with the provision of the Bengal Public Demands Recovery Act, 1913 (Ben. Act m of 1913)].

(6) Notwithstanding anything contained in the foregoing provisions of this section, where any plot of land not exceeding 0.03 acre situated in the areas falling within the local limits of any Municipal Corporation or Municipality, or any plot of land not exceeding 0.08 acre situated in the area not falling within the local limits of any Municipal Corporation or Municipality, other than any plot of land having water body of any description or size, has been changed, converted or altered in -the area, character or mode of use of such plot of land in violation of the provision of sub-section (2) of section 4C and if the State Government, on the basis of any report of the Collector, is of the opinion that it is necessary to do so in the public interest, the State Government may, by

order, authorise the Collector to regularise such change conversion or alteration in the area, ' lot character or mode of use of the said plot of land, other than any P f of land having water body of any description or size, on payment of such fee depending on the different character or mode of use or size of the plot of land, and in such manner, as may be prescribed.

Provided that the provision of this sub-section shall not apply to any application for regularization of any plot of land where such plot of land is changed, converted or altered in the area, character or mode of use of such plot of land in violation of the provision of sub-section (2) of section 4C, made after such time as may be prescribed:

Provided further that the provision of this sub-section shall not apply to any case where prosecution has been initiated under section 4D.”

Section 4D of West Bengal Land Reforms Act, 1955 reads as under:

“S.4D. Offence and penalties.- (1) Any change, conversion or alteration in the area, character or mode of use of any land, except in accordance with the provisions of section 4C, or any violation of the order of the Collector under sub-section (5)

of section 4C, shall be a cognizable and non-bailable offence and shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to fifty thousand rupees or with both:

Provided that no prosecution shall lie for an offence under this sub-section in a case where an action has already been taken by the prescribed authority under sub-section (4) of section 4.

(2) *****”

17. In the light of above discussions and perusal of the aforesaid provisions, this Court does not find any sufficient materials against the present petitioner, who was merely being the wife of the petitioner no. 1, Probodh Chandra Roy.

18. From the perusal of the complaint or charge sheet, this Court does not find any specific allegation or role played by the petitioner no. 2, namely, Smt. Jharna Roy for offence alleged to have been committed.

19. In view of the facts, if the proceeding is continued, it would be definitely an abuse of process of law.

20. Accordingly, **CRR 2214 of 2016** is **allowed**. Connected applications, if any, are also thus disposed of.

21. Consequently, Charge Sheet No. 77 dated 31st January, 2014 under Section 4D of the West Bengal Land Reforms Act, 1955 arising out of Sonarpur P.S. Case No. 582 of 2013 (G.R. Case No. 2476 of 2013) and the proceeding thereof are quashed.

22. Let a copy of this Judgment be sent to the Learned Trial Court for information.

23. Case Diary is to be returned to the learned counsel for the State.

24. Interim order, if any, stands vacated.

25. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)