

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

**APO/158/2020
[WITH WPO/975/2016]
IA NO: GA/5/2023
THE KOLKATA MUNICIPAL CORPORATION AND ANR.
VS
SMT. MADHUMITA GUPTA AND ORS.**

**APO/159/2020
[WITH WPO/975/2016]
IA NO: GA/6/2023
THE KOLKATA MUNICIPAL CORPORATION AND ANR.
VS
SMT. MADHUMITA GUPTA AND ORS.**

**Present :
THE HON'BLE JUSTICE DEBANGSU BASAK
-A N D-
THE HON'BLE JUSTICE MD. SHABBAR RASHIDI**

For the Appellant : *Mr. Alope Kumar Ghosh, Adv.
Mr. Dilip Kumar Chatterjee, Adv*

For the Respondent : *Mr. Utpal Majumdar, Adv.
Mr. Pushan Kar, Adv.
Ms. Arunima Lala, Adv.
Mr. Triptimoy Talukder, Adv.
Mr. Diptimoy Talukder, Adv.
Ms. Shreya Ghosh Dastidar, Adv.*

For the State : *Mr. Wasim Ahmed, Adv.
Md. Shehabuddin, Adv.*

HEARD ON : 19.11.2024
DELIVERED ON : 19.11.2024

DEBANGSU BASAK, J.:-

1. Two appeals are heard analogously. They arise out of orders passed in a writ petition and on a review petition filed in respect of the final order passed in such writ petition.
2. APO 158 of 2020 is directed against the order dated July 19, 2020 passed in RVWO No. 46 of 2017 while APO 159 of 2020 is directed against order dated November 15, 2016 passed in WPO 975 of 2016.
3. Both the appeals are at the behest of the Kolkata Municipal Corporation and its functionaries.
4. Learned Advocate appearing for the appellants submits that, the learned Counsel appearing before learned Single Judge initially made an incorrect submission on an erroneous assumption of material facts. Subsequent to the order dated November 15, 2016 being passed by the Writ Court disposing of the writ petition, he submits that, appellants proceeded to implement such order. While proceeding to implement such order appellants came across various documents which prompted the appellants to take a different view over the subject and realise that the initial submission made on behalf of the appellants through their learned Counsel as recorded in order dated November 15, 2016 was erroneous.

- 5.** Learned Advocate appearing for the appellants submits that consequently the appellants filed a Review Petition being RVWO 46 of 2017 which resulted in the order dated July 19, 2019. He draws the attention of the Court to the order dated July 19, 2019.
- 6.** Learned Advocate for the appellants submits that, the writ petitioners are claiming to be the owners of an immovable property described as premises No. 1, Kustia Road, Kolkata 700 039. Premises No. 1, Kustia Road, Kolkata – 700 039 was a huge property. Initial owners sold a substantial portion of such immovable property to different persons.
- 7.** Learned Advocate appearing for the appellants submits that, State Government issued a de-requisition notice. Appellants are not occupying the property which is covered under the de-requisition notice. He submits that, appellants are in possession of premises no. 2, Kustia Road, Kolkata 700 039.
- 8.** Learned Advocate appearing for the appellants refers to a report submitted in Court and particularly to page 37 thereof, which is a Notification dated July 19, 1993 issued under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976. He submits that by virtue of such notification the land in question stood vested with the State. Therefore, according to him the writ petitioners are no longer entitled to the benefit of the order of de-requisition.

- 9.** Learned Advocate appearing for the writ petitioners relies upon a list of dates and the order dated March 4, 2020 passed by the Coordinate Bench while admitting the appeal. He draws attention of the Court to such order and submits that, the Corporation generated premises no. 2, Kustia Road on its own subsequent to the initial order passed in the writ petition.
- 10.** Learned Advocate for the writ petitioners submits that the writ petitioners are the owners of the immovable property concerned which was directed to be de-requisitioned by the State. He submits that both the appeals are without any merits.
- 11.** We considered the rival contentions of the parties.
- 12.** It appears from the records made available to Court that in 1948 premises no. 1, Kustia Road, Kolkata was requisitioned by the Army Authorities under the Defence of India Act, 1915. Subsequently, such property was de-requisitioned by the Army Authorities.
- 13.** Original owners of premises No. 1, Kustia Road, Kolkata sold 11 bighas 14 cottahs 5 chhitacks 4 sq. ft. and 9 bighas, 3 cottahs 4 chhitacks 30 sq. ft. of premises no. 1, Kustia Road, Kolkata to Debendranath Adhikari and Jatiya Silponnayan –O- Punarbasati Samity by two separate registered indentures executed in 1953.

- 14.** In 1955 a portion of the land purchased by Debendranath Adhikari and Jatiya Silponnayan –O- Punarbasati Samity sold a portion of that land to Raj Bahadur Purnendu Narayan Roy Deb Burman and Kumar Sachindra Naraian Roy Deb Barma.
- 15.** North western portion of the property admeasuring more or less 3 bighas was requisitioned under the West Bengal Premises Requisition & Control Temporary Provisions Act, 1947 for temporary residence of the staff of Kolkata Municipal Corporation on rental basis.
- 16.** A reference was made under Section 19(1)(b) of the Defence of India Act, 1915 to the learned Arbitrator in respect of the rent compensation payable. Such learned Arbitrator passed award on December 26, 1956.
- 17.** By a letter dated April 2, 1965, Kolkata Municipal Corporation wrote to the Solicitors of the owners of the property involved that the premises requisitioned is No.1, Kustia Road, Kolkata. State de-requisitioned premises no. 1, Kustia Road in April 1992. A direction was given to the surveyor and valuer to handover possession of such property.
- 18.** However, Kolkata Municipal Corporation Authorities from time to time failed to make over the vacant possession to the original owners. Thereafter, by a writing dated May 25, 1993, the Joint

Secretary to the Governor dealt with premises No. 1, Kustia Road, Kolkata under the provisions of the West Bengal Premises Requisition and Control (Temporary Provisions) Act 1947.

- 19.** Writ petitioners demanded handing over of possession of premises No. 1, Kustia Road, Kolkata and a de-requisition programme was fixed in respect of the same on October 3, 2012. However, title proof was requisitioned by the authorities.
- 20.** By a letter dated January 20, 2024 writ petitioners wrote to the Land Acquisition Collector for fixing a date for establishing the ownership of the property. By a letter dated December 22, 2015, Land Acquisition Collector wrote to the Corporation Authorities requesting for a suitable date and time for fixing restoration programme to avoid any further litigations.
- 21.** Writ petitioners not receiving the possession of the de-requisitioned property filed a writ petition being WP No. 975 of 2016.
- 22.** By a letter dated April 29, 2016 the first Land Acquisition Collector informed the writ petitioners that rent compensation was ready for payment and that the writ petitioners were requested to submit the consolidated bill in triplicate.
- 23.** On August 4, 2016, writ petitioners received rent compensation in respect of the premises No. 1, Kustia Road, Kolkata from the office of the Land Acquisition Collector.

- 24.** The writ petition of the writ petitioners was disposed of by an order dated November 15, 2016. By the impugned order dated November 15, 2016 learned Single Judge held that the writ petitioners established clear right to receive possession of the land and directed the Kolkata Municipal Corporation to handover vacant possession to the writ petitioners within six weeks from date.
- 25.** A review petition was filed being RVWO No. 46 of 2017 resulting in the impugned order dated July 19, 2019. Learned Single Judge refused to interfere with the review application by such impugned order.
- 26.** Appellant preferred the two appeals herein.
- 27.** In the appeal appellants sought to rely upon documents to claim that the appellants are not in possession of premises No. 1, Kustia Road, which is the subject matter of the writ petitioner. It is their contention that the Corporation is in possession of Premises No. 2, Kustia Road, Kolkata.
- 28.** Co-ordinate Bench by an order dated March 4, 2020 held at the prima facie level that, the documents were prepared by the Corporation subsequent to the first order passed in the writ petition.

- 29.** At the hearing of the appeal, no further document was produced by the appellants to dislodge the prima facie finding made by the Coordinate Bench on March 4, 2020.
- 30.** That apart, there are overwhelming documentary materials on record to establish that property belonging to the writ petitioners was requisitioned. Such property belonging to the writ petitioners subsequent to the order of de-requisition was not made over to the writ petitioners. As late as on August 4, 2016, the Land Acquisition Collector called upon the writ petitioners to receive rent compensation acknowledging them as the owners of the property concerned.
- 31.** Appellants possesses no higher or better rights than the State in respect of the property concerned.
- 32.** The plea of the appellants that the property concerned stood vested under the Urban Land (Ceiling & Regulation) Act, 1976 is without any foundational basis. The notice dated July 19, 1993 issued under the Act of 1976 relates to a premises No. 1A, Kustia Road and relates to one Debendra Adhikari. Writ petitioners are not claiming title through Debendra Adhikari and the premises concerned is not premises no. 1A, Kustia Road, Kolkata 700 039.

33. In such circumstances, we find no merits in both the appeals. APO 158 of 2020 and APO 159 of 2020 are dismissed without any order as to costs.

34. Time to comply with the order dated November 15, 2016 passed by the learned Single Judge is extended for a period of four weeks from date.

(DEBANGSU BASAK, J.)

35. I agree.

(MD. SHABBAR RASHIDI, J.)

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