

CIVIL APPEAL**F. M. A. No. 367 of 2005****Present: The Hon'ble Mr. Justice Bhaskar Bhattacharya
and
The Hon'ble Mr. Justice Prasenjit Mandal****Judgment On: 16.04.2010.****State of West Bengal & Ors
Versus
Anil Ratan Banerjee and ors****POINTS:**

NOTICE- Notices under the provisions of 6 and 8 to 10 of the Urban Land (Ceiling & Regulation) Act, 1976 Act were not served- Order of vesting whether proper- Urban Land (Ceiling & Regulation) Act, 1976, Ss.6(2),8,9,10(3)

FACTS:

The learned Judge allowed the writ petition directing the Competent Authority under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 to restart the proceedings from the stage of Sub-Section (2) of Section 6 of the Act treating the writ petitioners as the owners of the property referred to in the writ petition and also directing to take all the subsequent steps from the stage of Sub-Section (2) of Section 6 of the Act upon notice to the writ petitioners. Being aggrieved, the State-respondent has preferred this appeal.

HELD:

The writ petitioners were entitled to get notice under the provisions of Section 6, 8 & 9 of the said Act before any order of vesting in respect of the property in question was passed. Such a recourse having not been followed in the instant case, the order of vesting as notified in the notification dated May 7, 1988 cannot be supported. The notices under the provisions of Section 6, 8 & 9 of the said Act of 1976 were not at all served upon the writ petitioners. Consequently, the order of

vesting passed by the Competent Authority has not been done in accordance with the provisions of the said Act.

Para-16

Since the added respondents are also subsequent transferees, they are the persons interested in the land in question as per provisions of the said Act. So they are also entitled to get notice from the stage under Section 6(2) of the said Act.

Para-18

CASE CITED:

Yedida Chakradhararao Vs State of Andhra Pradesh (1990) 2 SCC 523

For the State - appellant: Mr. A. N. Banerjee,
Mr. Ziaul Haque.

For the respondent: Mr. Anindya Mitra,
Nos.1 to 13 Mr. Pramit Roy,
Mr. S. G. Mukherjee,
Ms. Sanjukta Bhattacharya,
Mr. Aditya Kanodia.

For the added Respondents: Mr. Surojit Nath Mitra,
Mr. Amitesh Banerjee,
Mr. Abhijit Sarkar,
Ms. A. Abdullah.

THE COURT:

1) This appeal has arisen out of the order dated July 6, 2004 passed by one of the learned Judges of this Court in C.R. No.14209(W) of 1988 whereby the learned Judge allowed the writ petition thereby directing the Competent Authority under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 to restart the proceedings from the stage of Sub-Section (2) of Section 6 of the Act treating the writ petitioners as the owners of the property referred to in the writ petition and

also directing to take all the subsequent steps from the stage of Sub-Section (2) of Section 6 of the Act upon notice to the writ petitioners. Being aggrieved, the State-respondent has preferred this appeal.

2) The brief fact necessary to unfold the issues involved in the writ petition is that according to the Writ-Petitioners, one D. R. Karnani purchased land measuring 3 Bighas 7 Cottahas 9 Chittacks and 5 Square feet with structures thereon at premises no.113/12, Diamond Harbour Road, Behala in 1966 and then he constructed several residential units at the said premises and those constructions were duly recorded with the concerned municipal authority in 1973-74. Thereafter the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 (henceforth shall be called as the Act) came into force in February, 1976. The said Karnani entered into an agreement for development of the said property with one Milan Tritha Samabay Abasan Samity Limited and / or one N. Chakraborty. But the said agreement was cancelled subsequently. On the basis of a complaint, a spot enquiry was held without giving any notice to the said Karnani. Thereafter, the said Karnani sent notice under Section 26 of the said Act for permission to transfer the said land with building structures but the appellant did not give any reply to such notice. Then as per the then existing Rule after expiry of 60 days, the deeming Clause came into force. Thereafter, an agreement for sale was made between D. R. Karnani and the writ petitioner no.12 and in part performance of such agreement for sale, the writ petitioner no.12 came into possession of the entire property on April 19, 1985. On May 4, 1985 permission to construct buildings was recorded by the State of West Bengal under the Town & Country Planning Act, 1979 on the said property. The appellant issued 'no objection certificate' on June 15, 1985. The writ petitioner no.12 intimated the appellant on November 9, 1985 to the effect that they were in possession of the said property but no reply was given. Then,

on May 14, 1987, a decree for specific performance was passed by the competent court against Karnani. Thereafter on July 8, 1987, several Deeds of Conveyance were executed by the Assistant District Judge in favour of the writ petitioner no.12 who, however, registered a Deeds of Release in favour of the writ petitioner nos.1 to 11 and those Deeds of Release were registered on April 26, 1988 reflecting thereby the permission to transfer under Section 27 of the said Act.

3) Then in September, 1987 the writ petitioners intimated the Competent Authority that the property in question was held by 12 separate persons and not by Mr. D. R. Karnani. The writ petitioners were entitled to get notice under Rules 5 and 6 of the Urban Land (Ceiling & Regulation) Rules, 1976. But the writ petitioners were not given any notice of the final statement prepared by the Competent Authority under the provisions of the said Act. Even no notice was served upon D. R. Karnani. In fact, Karnani became disinterested in the property in question after sale. The writ petitioner no.12 filed representations to the appellant in vain and then in 1988 the writ petitioners filed the writ petition challenging the action of the appellants and got interim order of injunction. During pendency of the said writ petition, the appellants granted 'no objection certificate' for grant of sanction of the building plan. The learned Single Judge disposed of the said writ petition by the impugned judgment and order. Thereafter, the writ petitioners filed one review application and that review application was disposed of subsequently. Sylvia Properties Private Limited and others filed another writ petition bearing number W.P.1883 of 2004 against the Kolkata Municipal Corporation and the competent authorities under the said Act against the action of the corporation and the authorities at the instance of some interested persons. That writ petition was disposed of on July 6, 2005 and the appeal thereof filed by the Competent Authority against the order dated July 6, 2005 in W.P. No.1883 of 2004 is still pending.

4) In the meantime, several residential flats were constructed on the property in question and those were sold to different buyers. The writ petitioners/respondents contend that the property in question could not vest in the State as the Competent Authority issued 'no objection certificate' and a large number of dwelling units had been constructed upon getting sanction from the municipal corporation.

5) The appellants contend that steps for vesting, under the provisions of the said Act of 1976, were duly taken and the process of vesting had been completed by taking recourse under Sections 6 and 8 to 10 and issuing due notice upon the recorded owner. So the writ petition should have been dismissed by the learned Single Judge.

6) Mr. Banerjee, learned Advocate for the appellants contends that all the necessary steps starting from Section 6 and 8 to 10 of the said Act of 1976 have been duly complied with and the land in question has been vested as the surplus land of the owner. The draft statement and then the final statement of excess land were duly prepared after due service of notice under Sections 6(2), 8(3) and Section 9 of the Act upon the owner. The subsequent transferees, that is, the writ petitioners are not entitled to get any notice. The writ petitioners being the post-vesting purchasers are not, at all, entitled to get any notice under the provisions of the said Act of 1976 and that they cannot file any statement under the said Act. In fact, D. R. Karnani did not take any permission to transfer the land in question under Section 26(1) of the said Act. Steps have been taken under Section 10 of the said Act properly and the land in question has been vested under Section 10(3) of the said Act. So, the impugned judgment and order should be set aside.

7) On the contrary, Mr. Anindya Mitra, learned Senior Advocate appearing on behalf of the respondents, submits that no notice was served either upon D. R. Karnani or the writ petitioners. The materials as produced by the appellant before Court clearly indicate that the notice was not at all served upon D. R. Karnani with regard to the property in question. Two acknowledgement due cards have been brought as materials in the writ petition; but the corresponding letters have not been filed to show that those acknowledgement due cards were really connected with the memo number mentioned in the acknowledgment due cards. After all, in spite of intimation upon the competent authorities, they did not serve any notice upon the transferees, i.e., the writ petitioners. So, the steps for vesting under the provisions of the said Act of 1976 are totally illegal. Thus, he has supported the judgment and order passed by the learned Single Judge.

8) Mr. Surojit Nath Mitra, learned Senior Advocate appearing on behalf of the added respondents adopts the argument made by Mr. Anindya Mitra in support of the impugned judgment and order.

9) Upon due consideration of the submission of the learned counsel of both the sides and on perusal of the materials on record, we find that the following questions arise for decision in this appeal:-

- i) Whether notices under the provisions of 6 and 8 to 10 of the Act of 1976 were duly served upon the owner of the property, and
- ii) Whether the order of vesting passed by the Competent Authority under the Act of 1976 has been done in accordance with provisions of the said Act.

10) It is not in dispute that D. R. Karnani was the recorded owner of the property in question measuring 3 Bighas 7 Cottahas 9 Chittacks and 5 Square feet at premises no.113/12, Diamond

Harbour Road, Behala. In the process of vesting of excess land beyond the ceiling limit, the appellants were required to serve due notice upon the recorded owner or the person interested thereto right from the Sections 6, 8 and 9 and then to publish a notification in the official gazette under Section 10(1) of the said Act. From the materials placed in the writ petition, we find that in February, 1976, D. R. Karnani entered into an agreement for development of the property in question with one Milan Tritha Samabay Abasan Samity Limited and / or one N. Chakraborty. But, subsequently, the said agreement was cancelled. Thereafter, by a notice dated April 16, 1982 under Section 6(2) of the said Act, the appellants asked D. R. Karnani to file statements in Form-1 with the concerned Competent Authority (vide annexures appearing at page 258 A and 258 B). From the materials on record, it is also evident that then the appellant served another notice under Section 9 of the said Act upon D. R. Karnani on January 25, 1988 (vide annexures appearing at page 258 C and 258 D). But, in order to vest the excess land beyond the ceiling limit under the provisions of the said Act, the appellants were required to serve notice upon the recorded owner or the persons interested thereto not only under Section 6(2) in case of non-compliance of Section 6(1) of the Act and after preparation of the draft statement under Section 8 of the said Act but also after preparation of the final statement under Section 9 of the said Act. The appellant did not produce any paper to show that the draft statement had been served upon D. R. Karnani or the persons interested in the property in question under Section 8(3) of the said Act. From the materials on record, it is evident that a notification under Section 10 of the said Act with regard to the property in question was duly published in the official gazette of the State (vide annexures appearing at page nos.258 F and 162).

11) It is submitted on behalf of the appellants that the notification was duly gazetted and the copy of the notification was duly sent to D. R. Karnani by annexures appearing at page 258 E. Though from the materials on record, it is clear that notification was duly published in the official gazette, yet, it could not be said that the said notification was duly served upon D. R. Karnani because the material appearing at page 258 E clearly shows that it is the body of the envelope bearing the address of the B.L.R.O., Behala and the same was refused by the addressee on May 17, 1988. So it could not be said that the same was refused by D. R. Karnani.

12) In the meantime, after service of notice under Section 6(2) of the said Act upon D. R. Karnani the property in question was transferred to the assignors of the writ petitioners on July 8, 1987 and registered on April 26, 1988 vide annexures appearing at page no.57F onwards of the P.B. The assignor of the writ petitioners intimated the Competent Authority on September 11, 1987 that the assignor of the writ petitioners took possession of the land in question before such sale. Notice of intention of transfer under Section 26 of the said Act was served upon the Competent Authority under the Urban Land (Ceiling & Regulation) Act, 1976 on February 25, 1985 that the land with the building and R.J. structures would be sold (vide annexures at page no.48 of the Paper Book). After lapse of 60 days from the date of service of such notice, that is, on April 19, 1985 the agreement for sale of the land in question was held between D. R. Karnani and the assignor of the writ petitioners. Then the writ petitioners came into possession of the entire property. The respondent no.12 also intimated the Competent Authority that they are in possession of the property in question since November 9, 1985 (vide annexure at page nos.51 & 52 of the P.B.). Thus, we find that the Competent Authority was very much aware of the fact that beside the recorded owner, other persons namely the assignor of the writ petitioners and subsequently the writ petitioners were

in possession of the entire property in question and, thus, they are the persons interested with regard to the land in question. Therefore, for the reasons stated above, those persons are entitled to get notice of the steps under the provisions of Section 6, 8 and 9 of the said Act. But from the materials on record, we do not find that the Competent Authority had ever served any notice upon the assignor of the writ petitioners or the writ petitioners.

13) Mr. Banerjee contends that as the proceedings under Section 10(3) of the said Act have been completed and the excess land of the recorded owner has been vested in the State free from all encumbrances with effect from the date specified in the notification, the judgment and order cannot be supported. With due respect to him, we are of the view that such contention cannot be accepted because of the fact that unless and until, the procedure for vesting in accordance with the Act is followed, the order of vesting cannot be supported at all.

14) From the materials placed before us, we find that the writ petitioners prayed for “no objection certificate” before the Competent Authority under the said Act of 1976 for construction of several dwelling units and then the Competent Authority accorded “no objection certificate” by its order dated August 11, 1997, that is, during pendency of the writ application (vide page 237 of the P.B.). When a person interested in the land in question is found to be in possession of the same, he is entitled to notice before passing any order of vesting under the scheme of the said Act of 1976.

15) In this regard, Mr. Mitra refers to the decision in the case of Yedida Chakradhararao Vs. State of Andhra Pradesh reported in (1990) 2 SCC 523 and thus he submits that even when an agreement for sale is held between the parties and the possession of the land is delivered to the intended

vendee though no Deed of Conveyance was executed, the land held by both the owner-vendor as well as the purchaser may be treated as land of both the parties to the agreement for sale. In such circumstances, the purchaser is entitled to get notice from the Competent Authority as the person interested in the land in question.

16) In view of above discussions, we are of the considered view that the writ petitioners were entitled to get notice under the provisions of Section 6, 8 & 9 of the said Act before any order of vesting in respect of the property in question was passed. Such a recourse having not been followed in the instant case, the order of vesting as notified in the notification dated May 7, 1988 (appearing at page nos.258 F and 162-163 of the P.B.) cannot be supported. The notices under the provisions of Section 6, 8 & 9 of the said Act of 1976 were not at all served upon the writ petitioners. Consequently, the order of vesting passed by the Competent Authority has not been done in accordance with the provisions of the said Act.

17) So, we are of the view that the learned Single Judge has rightly disposed of the writ petition directing the Competent Authority to proceed afresh from the stage of Section 6(2) of the said Act. There is nothing to interfere with the impugned judgment and order. Accordingly, the appeal is dismissed.

18) Since the added respondents are also subsequent transferees, they are the persons interested in the land in question as per provisions of the said Act. So they are also entitled to get notice from the stage under Section 6(2) of the said Act.

19) Considering the circumstances, there will, however, be no order as to costs.

20) Urgent xerox certified copy of this order, if applied for, be made available to the learned Advocate for the parties on their usual undertakings.

(Prasenjit Mandal, J.)

21) I agree,

(Bhaskar Bhattacharya, J.)