SOMNATH CHAKRABORTY AND ANR. A

v.

APPOLLO GLENEAGLES HOSPITALS LTD. & ORS.

(Civil Appeal Nos.6683-6684 of 2014)

JULY 23, 2014 B

[FAKKIR MOHAMED IBRAHIM KALIFULLA AND A.K. SIKRI, JJ.]

Urban Land (Ceiling & Regulation) Act, 1976 - s.10(3) - Compensation, utilization charges, interest and costs - Grant C *of - 11.659 cottah of land-locked land purportedly owned by appellants - Meanwhile the 1976 Act came into effect - Land notified u/s.10(3) of the 1976 Act - State Government claimed the land as its property and handed over the same to first-Respondent Hospital on lease for 30 years with option for* D *renewal under lease deed dated 21.06.1991 - First-Respondent Hospital paid premium of Rs.94,41,300 - The lease deed also obligated payment of 10% of the said sum by way of annual lease rent - Writ petition filed by appellants challenging the Notification issued under the 1976 Act -* E *Allowed by Single Judge of High Court - Division Bench held that the hospital authority was not required to hand over actual physical possession to the State before a final declaration, if any, was made u/s.10(3); and further the hospital authority was obliged to compensate the respondents to the extent of the* F *land, if any allowed to be retained by them, by the competent authority under the 1976 Act and for the balance part of the land, the State was obliged to pay compensation - Appellants agreed to abide by the judgment of the Division Bench; and also no challenge thereto at the instance of First respondent-* G *Hospital or the State Government - Competent Authority under the 1976 Act found that appellants were not in possession of any surplus land - Held: In the circumstances, respondent-Hospital to bear entire compensation - It is liable*

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A *to pay the following amounts in full and final settlement of all the claims of appellants in respect of the land in question admeasuring 11.66 (11.659) cottah: a) compensation towards value of land @ Rs.24,04,188 per cottah for 11.66 (11.659) cottah which comes to Rs.2,80,32,832; b) interest @ 2% p.a*
B *for 23 years which works out to Rs.1,28,95,102; c) utilization charges @ Rs.21,500 p.a equal to Rs.4,94,500 and d) costs of Rs.5 lacs, thus in all amounting to a total of Rs.4,19,22,434 rounded off to Rs.4,20,00,000.*

C CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6683-6684 of 2014.

From the Judgment and Order dated 08.12.2009 in FMA No. 2393 of 2005 and FMA 2411 of 2005 of the High Court of Calcutta.

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Chander Uday Singh, Ranjan Mukherjee, Pratap Venugopal, Meenakshi Chauhan, Gaurav Nair (For K. J. John & Co.,), Pijush K. Roy, Kakali Roy, Mithilesh Kumar Singh, Avijit Bhattacharjee for the appearing parties.

E The Judgment Order of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. Leave granted.

F 2. These appeals are directed against a common judgment of the Division Bench of the Calcutta High Court passed in F.M.A. No.2393 of 2005 and F.M.A. No.2411 of 2005 dated 08.12.2009.

3. To briefly narrate the facts, the appeals pertain to a
G piece of land which is as on date in the possession of the first Respondent Appollo Gleneagles Hospitals Ltd. (hereinafter called "Appollo Hospitals"), which was originally owned by one Narayan Chandra Dutta. He stated to have sold the said lands to one Tilak Sundari Debi. Her title was confirmed after

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prolonged litigation in the judgment of the High Court of Calcutta dated 25.07.1986 in Second Appeal No. 384 of 1967. When the said litigation was pending, the heirs of late Tilak Sunderi Debi sold the said lands to the present Appellants who became the joint owners of the land consisting of 11 Katha 10 chitaks and 25 square feets, in all 11.659 cottah of land. A B

4. Be that as it may, the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as "the Act") was brought into effect w.e.f. 17.02.1976. The civil litigation preferred by late Tilak Sundari Debi was resisted by one Orient Beverages Ltd. also known as Orient Properties Ltd. claiming to have acquired title in respect of the said lands. At the time when proceedings under the Act were initiated, the said Orient Properties Ltd., pursuant to the notices issued under the said Act agreed to surrender the lands which was the subject matter of litigation which ultimately came to be notified under Section 10(3) of the Act by Notification dated 11.05.1990. The State of West Bengal claimed the said lands as property of the State as from 05.05.1990 and the Orient Properties Ltd. stated to have handed over possession on 28.05.1990. Thereafter, the State handed over the land along with adjacent lands to one M/s Janapriya Hospital Corp. Ltd. pursuant to a registered lease deed for 30 years with option for renewal under the lease deed dated 21.06.1991. Based on the said lease deed, the Hospital paid a premium of Rs.94,41,300. Later on Janapriya Hospital Corp. Ltd. became Appollo Gleneagles, the first Respondent herein. As per the lease deed the lease is to expire on 2021. Apart from the premium, the lease deed also obligated a payment of 10% of the said sum by way of annual lease rent. C D E F

5. In July, 1993, the Appellants filed a writ petition being C.O.No.8616(W) of 1993 challenging the ultimate Notification issued under the Act. An interim order was initially granted by the Learned Single Judge on 12.07.1993 directing the Respondents to maintain status quo. Subsequently, the Writ Petition itself came to be allowed by order dated 02.05.2005. G H

A Even while the order of status quo was in operation, it appears that the first Respondent made some constructions and the Hospital came to be established.

6. Against the judgment of the learned Single Judge, Appollo Hospitals and the State of West Bengal preferred B separate appeals in F.M.A. No.2393 of 2005 and F.M.A. No.2411 of 2005. The Division Bench by the judgment impugned in these appeals held as under in paragraph 12.1:

> "12.1 The second appellate decree might be binding only C upon the parties to the said proceedings. However, it is otherwise a judgment *in rem*, at least against any person claiming title derived from the judgment debtor. Hence, State deriving title by way of vesting from Orient was not entitled to deny the right, title and interest of the D respondents in question." (underlining is ours)

Again in paragraph 12.2 the Division Bench observed as under:

> "12.2.....The title was in dispute. Hence the doctrine of E *lis pendence* would apply. During the pendency of the second appeal, the present respondents purchased the interest of the then owner of the said land in question which was yet to be adjudicated upon. They stepped into the shoes of their predecessor in interest. The declaration was F made in their favour by the Division Bench of this Court. Hence, the State was obliged to proceed against them under the provisions of the said Act of 1976. The learned Single Judge rightly observed as such and we are in full agreement with His Lordship on that score." (underlining G is ours)

Again in paragraph 12.3 the Division Bench made further observations to the following effect:

> "12.3 It is true that the hospital was constructed by Appollo H

by spending huge sum. They did it at their own risk and peril as it was a lease for 30 years which is going to expire in 2021. The Hospital authority took that risk before proceeding further. Hence, the contention made by Mr. Mitra on that score cannot be accepted."

Further observation was made by Division Bench in paragraph 12.4 as under:

"12.4 We however, feel that although it is a private hospital it is serving people of the State giving medical services and it would not be proper to stop such activity at this stage. We are prompted to say so as we also find the respondents guilty of laches. They did not approach the appropriate authority at the right moment. They should have raised objection contemporaneously. However, such laches cannot take away their right to claim appropriate relief without disturbing the hospital, if possible." (underlining is ours)

Ultimately the Division Bench issued the following direction in paragraphs 13.1 and 13.2. The same are extracted as under:

"13.1 The order of the learned Single Judge is thus modified to the extent that the hospital authority need not hand over actual physical possession to the State before a final declaration, if any, is made under Section 10 (3) considering the return to be submitted by the respondents in terms of the liberty granted by His Lordship to them.

13.2 The hospital authority would be obliged to compensate the respondents to the extent of the land, if any allowed to be retained by them, by the competent authority under the said Act of 1976 and for the balance part of the land the State would be obliged to pay compensation in accordance with law."

7. The abovesaid judgment of the Division Bench is the

A subject matter of challenge in these appeals.

8. When these appeals were moved, while issuing notice, this Court gave the following directions in the orders dated 27.08.2012 and 05.10.2012:

B "In the facts of the case, the concerned learned District Collector at Mayukh Bhavan, 2nd Floor, Salt Lake, Kolkata is requested to file his own calculations taking into consideration the calculations submitted by the present petitioner before him. For his convenience, the petitioner C shall remain present before him on 4th September, 2012. He shall be heard and understood as to what is his grievance and then final report may be prepared and submitted before us within four weeks. List the matter in the first week of October, 2012.

D "Order dated 27th August, 2012 is modified to the extent that the phrase "learned District Collector" be replaced by the "Competent Authority" under the Urban Land (Ceiling & Regulation) Act, 1976. This exercise may be done by E the learned Competent Authority within a period of six weeks. List after eight weeks."

9. At this juncture, it will have to be noted that neither the first Respondent nor the State of West Bengal have chosen to challenge the impugned judgment before this Court. Therefore, F the same has become final as against both of them. By virtue of this Court's orders dated 27.08.2012 and 05.10.2012, the competent authority went into the question as to whether the Appellants were in possession of any surplus land under the provisions of 1976 Act. An order came to be passed by the G competent authority on 30.10.2012 by which it was declared that the Appellants are not in possession of any surplus land in the agglomerated area and, therefore, the question of compensation to be given by the competent authority Kolkata under the Act does not arise. In the light of the said order, going H by the ultimate direction of the Division Bench, it is now for the

Appollo Hospitals to bear the entire compensation. In other words, the Appollo Hospitals is now liable to bear the compensation payable for the entire extent of the land namely 11.66 cottah (11.659 cottah). A

10. Having regard to the said position and the further fact that the land in question is situated in land-locked area, even the Appellants have no option than to accept the compensation for the lands which is in the possession of the Appollo Hospitals right from the year 1991 when the lease deed came to be entered as between the Appollo Hospitals and the State of West Bengal. Realizing the said position, both the parties agreed for fixing the valuation of the lands in order to determine the compensation. By this Court's order dated 28.01.2013, the *consensus ad idem* of both the parties for the appointment of Class-A Valuer approved by the Calcutta High Court who can be directed to determine the value. List of the approved Valuers was called for and by order dated 15.03.2013, from the list of Class-A Valuers approved by the Calcutta High Court, Mr. Sandip Nandi Majumdar was appointed as Valuer and he was directed to associate the competing parties while submitting the report. B C D E

11. Pursuant to the said orders, the Valuer submitted his report sometime in July, 2013. Thereafter the parties took time to examine the report of the Valuer. Copies of the report were also directed to be furnished to the parties. After the submission of the reports, parties filed their statements. F

12. From the above facts, the following factors emerge:

a. Appellants are the absolute owners of 11.66 (11.659) cottah lands situated at premises No.59, Canal Circular Road, Kolkata. G

b. There was no surplus lands which were capable of being acquired under the provisions of Urban Land (Ceiling & Regulation) Act, 1976. H

A c. Appollo Hospitals which was put in possession of 34,147 square metres of land pursuant to the registered lease deed dated 21.06.1991 included the 11.66 (11.659) cottah of lands comprising of 743.21 square metres and that Appollo Hospitals
B is in enjoyment of this property till this date.

d. The said lands, namely, 11.66 (11.659) cottah are land-locked lands surrounded by the other lands for which the Appollo Hospitals is having a valid lease hold rights by virtue of the registered lease deed
C dated 21.06.1991.

e. Inasmuch as the Appellants have agreed to abide by the judgment of the Division Bench and since there was no challenge to the said order at the
D instance of Appollo Hospitals or the State of West Bengal, it has now become imperative that the ultimate directions issued by the Division Bench will have to be carried out.

E f. By virtue of the order of the competent authority dated 30.10.2012, since Appellants were not holding any surplus lands in the urban agglomeration, the entire extent of land, namely, 11.66 (11.659) cottah belonged to the Appellants and the compensation payable for the said lands
F will have to be borne by Appollo Hospitals alone.

13. Keeping the above factors in mind, when we examine the stand of the respective parties, in the first instance, we wish to note the categoric stand taken by the Appellants in their
G additional affidavit dated 25.03.2014. In the said additional affidavit, the Appellants have accepted the value fixed by the approved Valuer wherein the value has been arrived at a sum of Rs.24,04,188 per cottah as of 2013 (after providing land locked allowance). In fact according to the Valuer, when he took
H into account the three Exhibits namely, Exhibits 5, 6 and 7 the

value per cottah was found to be Rs.25 lacs in Exhibit 5, Rs.58,34,133 in Exhibit 6 and 24,30,889 in Exhibit 7 and all the three exhibits were issued by the certifying authority of the State Government. The certificates were dated 05.03.2013, 10.6.2013 and 27.05.2013.

14. We heard Mr. Ranjan Mukherjee, learned counsel for the Appellants and Mr. C.U. Singh Senior Advocate for the Appollo Hospitals, Mr. Pijush K. Roy, counsel for the 5th Respondent and Mr. Avijit Bhattacharjee, counsel for Respondent Nos.1 to 3 in SLP (C) No.8855 of 2010. It will be advantageous to refer to the additional affidavit filed on behalf of the petitioners pursuant to the order dated 09.12.2013. The said affidavit was filed on 24.04.2014. While Exhibit 5 dated 05.03.2013 was collected by the State-Respondent, Exhibits 6 and 7 dated 10.06.2013 and 27.05.2013 respectively were collected by the Valuer himself. It is based on the above materials placed before by the Valuer, he ultimately arrived at the sum of Rs.25,04,188 per cottah after providing the land-locked allowance. As stated by us earlier, the Appellants have stated in paragraph 13 of their additional affidavit to the effect "the petitioners accepted current market value of land at Rs.24,04,188 per cottah as valued by Valuer as of 2013 (after providing land locked allowance)". Therefore, as far as the Appollo Hospitals is concerned, in their written submissions, there is statement to the effect that the Respondent No.1-hospital is in agreement that it shall pay the present market value of land at Rs.24,04,188 per cottah as ascertained by the Valuer in his report of July, 2013. Therefore, as regard the value of the land per cottah, there is no scope for any further probe and, therefore, it will have to be valued at the rate of Rs.24,04,188 per cottah for 11.66 (11.659) cottah of lands.

15. What remains to be ascertained is the claim of the Appellants for utilization charges, interest and costs. Insofar as the utilization charges are concerned, according to the Appellants they were deprived of the use of their land by the

A Appollo Hospitals at least from the year 1991 when the hospital was put in possession pursuant to the registered lease deed dated 21.06.1991. It is, therefore, contended that when the Appollo Hospitals agreed to pay 10% of the value of the salami of land, namely, Rs.98,41,300 i.e. sum of Rs.9,84,130 per B annum by way of lease rent for the entire extent of lands at least insofar as the Appellants' lands are concerned, they are entitled for normal return on the average value of land from June, 1991. Referring to the land value which was prevailing in June, 1991 at sum of Rs.3,15,997 per cottah and the land value in C June, 2013 at Rs.24,04,188 per cottah, the average land value was claimed to be Rs.13,60,092.50 per cottah and on that basis 10% of the said value is claimed as utilization charges i.e. the sum of Rs.1,36,009 per annum per cottah.

16. As against the above claim, on behalf of the Appollo D Hospitals, it is contended that what was agreed to be paid by way of annual lease amount at the rate of 10% on the total salami of land was taken into account the larger extent of 34,147 square metres within which the Appellant's land which was a small portion of 743.21 square metres. It is further stated that E the lands were marshy lands in 1991 totally undeveloped till the Appollo Hospitals made improvements by constructing the hospitals and, therefore, if at all, any utilization charges is to be considered, it should be the normal economic rent of 6% on the investment/capital value which would be on a sum of F Rs.10,001 per annum.

17. Having considered the respective submissions and having noted the salient factors in the case on hand, it will have to be borne in mind that after strenuous fight in the Court G proceedings the rights of the Appellants came to be crystallized as regards their ownership in the Second Appeal No.384 of 1967 which was decreed on 25.07.1986. That was the first round of litigation where the Appellants could ultimately succeed and establish their right of ownership over the lands in question. Thereafter, when they were confronted with the subsequent H

proceedings under the provisions of the Act, they had to launch the present proceedings again by approaching the High Court and this time by way of writ petition, in which the present impugned order ultimately came to be passed by the Division Bench on 08.12.2009. Therefore, for establishing their right to their property, enormous time, energy and money has been spent by the Appellants. The right to property is protected under Article 300A of the Constitution. In view of the nature of the location of the land which is in a land-locked position, the Division Bench has rightly found that the grievance of the Appellants can be redressed by giving directions as contained in paragraph 13 of the impugned judgment by which the Respondents were directed to compensate the Appellants for use of the lands.

18. Keeping the above factors in mind, we are of the view that to formulate the basis for fixing the utilization charges the method adopted in the lease deed dated 21.06.1991 as between the Appollo Hospitals and the State of West Bengal can be followed. As per the said lease deed the Appollo Hospitals agreed to pay 10% of the value of the salami land value, namely, Rs.98,41,300 which worked out in a sum of Rs.9,84,130 per annum as lease rent during the period of lease, namely, 30 years. The total land for which the lease rent was fixed was 34,147 square metres. Applying the very same formula for arriving the rental value of the lands of the Appellants which is 743.21 square metres, we find that the same will work out to Rs.21,355.62 per annum [(i.e.) 743.21 ÷ 34147 x 100 = 2.17 : 9,84,130 x 2.17 ÷ 100 = 21,355.62]. On that basis, we are convinced that the utilization charges can be fixed by rounding it off to Rs.21,500. Accordingly, we hold that the utilization charges shall be fixed in a sum of Rs.21,500 per annum (rounding off Rs.21,355.62 as Rs.21,500) and for a period of 23 years, namely, between 1991 and 2014, the utilization charges can be arrived at. The same comes to Rs.4,94,500.

A 19. The claim of the Appellants that utilization charges should be at the rate of Rs.5 lacs or on the basis of the average value of the land which was claimed at a sum of Rs.1,36,009 cannot be accepted, inasmuch as, it will have to be noted that the Appellants will be getting the value of the entire 11.66 cottah
B of lands as per the present day market value which has been fixed at Rs.24,04,188 per cottah. It cannot be lost sight that the value of the land in 1991 was far lower than what is now arrived at based on the Valuer's report which is for the year 2013. If the Appollo Hospitals is to pay the lease rent per annum based
C on the salami, namely, the royalty value of Rs.98,41,300 it will be more appropriate to fix the lease rent on the very same basis on which it was fixed under the lease dated 21.06.1991. In that way, Appollo Hospitals cannot also have any grievance inasmuch as apart from salami of Rs.98,41,300 for the land,
D they agreed to pay 10% of its value by way of lease rent for the first 30 years.

20. We, therefore, hold that utilization charges so arrived at shall be in the sum of Rs.21,500 and for the period between 1991 and 2014, namely, for 23 years. The first Respondent
E Appollo hospital is liable to pay a sum of Rs.4,94,500.

21. With that we come to the next claim of the Appellants which is the interest payable on the value of the land now determined by the Valuer. Since the market value as of the
F years 2013 has been fixed as payable for the 11.66 (11.659) cottah of the lands, we find that the deprivement of the use of the land of the Appellants and the State is certainly a right which is a Constitutional Right and the same was deprived for no fault of theirs. It is true that the land value has been fixed based on
G the value which was prevailing in the year 2013 while the Appollo Hospitals was put in possession of the lands in the year 1991 and the stand of the Hospital that the land value should have been fixed in 1991 though is not acceptable, the said stand can certainly be taken into account while considering the claim of the Appellants for payment of interest. Here again,
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we wish to reiterate that in the whole process, the Appellants have lost their property rights once and for all and on the other hand Appollo Hospitals will get absolute ownership right in respect of 11.66 (11.659) cottah of land which it can always cherish and enjoy without any hindrance from any quarters. Therefore, taking an overall view of the grievances of the Appellants, we are convinced that Appellants are entitled for payment of interest though not to the extent they claimed.

22. According to the first Respondent even if interest is to be granted that can only be on the value that was prevailing in 1991 which according to the first Respondent was Rs.10,001 per cottah and on that value interest at the rate of 6% per annum can be made. Instead, we hold that the Appellants are entitled for a nominal interest at the rate of 2% per annum on the total value of the land as accepted by both the parties, namely, Rs.2,80,32,832/-. On that basis, the interest payable by the first Respondent will work out to a sum of Rs.1,28,95,102 for 23 years.

23. With that the only other claim to be considered is costs. As stated by us earlier, the Appellants have been fighting this litigation by stepping into the shoes of their predecessor in interest from the year 1960 onwards in Title Suit No.79 of 1960 which was ultimately decreed in Second Appeal No.384 of 1967 by the decree dated 25.07.1986. Even thereafter the Appellants had to initiate the second round of litigation for ascertaining their rights as against the proceedings issued under the provisions of the Act of 1976 which has taken another two decades. Thereby the Appellants are knocking at the doors of the Court for the past 54 years. Therefore, they are surely entitled for cost of the litigation which we want to quantify in a lump sum of Rs.5 lacs. Accordingly, we hold that the Appellants are entitled and the first Respondent Appollo Hospitals is liable to pay the following amounts:

i. Compensation towards value of land Rs.24,04,188

A per cottah for 11.66 (11.659) cottah which comes to Rs.2,80,32,832 (Rupees Two Crores Eighty Lakhs Thirty Two Thousand Eight Hundred and Thirty Two only).

B ii. Interest at the rate of 2% per annum for 23 years which works out to Rs.1,28,95,102 (Rupees One Crore Twenty Eight Lakhs Ninety Five Thousand One Hundred and Two only).

C iii. Utilization charges at the rate of Rs.21,500 per annum equal to Rs.4,94,500 (Rupees Four Lakhs Ninety Four Thousand Five Hundred only).

iv. Costs Rs.5 lacs (Rupees Five Lakhs only).

D Total Rs.4,19,22,434. We round it off to Rs.4,20,00,000 in all to be payable by the first Respondent to the Appellants in full and final settlement of all the claims of the Appellants in respect of their lands admeasuring 11.66 (11.659) cottah.

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24. Having regard to our above conclusion, we want to consider the various directions prayed for by the Appollo Hospitals in their written submissions and we accordingly, pass the following order:

F a. The first Respondent shall deposit the sum of Rs.4,20,00,000 with the Secretary General of this Court within four weeks from today.

b. The Appellants shall make all arrangements to G produce the original title deeds and specify the schedule of the land and the sketch from the competent authority of the revenue department and furnish the same within eight weeks from this date.

H c. On submission of such records, by the Appellants

to this court, the first Respondent shall inspect those records and express its confirmation.

d. On such confirmation being submitted by the first Respondent within two weeks of the submission of the records by the Appellants, within two weeks thereafter the Appellants will execute a deed of conveyance of the land admeasuring about 11.66 (11.659) cottah of land in favour of first Respondent.

e. All stamp duty and registration charges and other incidental expenses for the conveyance shall be borne by the first Respondent Appollo Hospitals.

f. On such registration of the conveyance deed, the Appellants will be at liberty to seek for release of Rs.4,20,00,000 with whatever interest accrued thereon.

g. The State of West Bengal shall direct its authorities to ensure that the lands involved in this appeal, namely, 11.66 (11.659) cottah is issued necessary certificate of such demarcation.

h. The above said directions are without prejudice to the rights of the first Respondent hospital in relation to the rest of the lands which is governed by the registered lease deed dated 21.06.1991 as between the first Respondent hospital and the State of West Bengal which is stated to be for a period of 30 years with provision for option for further renewal for additional two terms of 30 years each. It is needless to state that the said rights of the first Respondent hospital under the registered lease deed dated 21.06.1991 would be governed by the terms and conditions contained therein in respect of the lands, namely, 34,147 - 743.21 square metre = 33,403.79 square metres.

A i. On deposit of the sum of Rs.4,20,00,000 with the Secretary General of this Court as per paragraph "a" of these directions, the Secretary General shall invest the same in UCO Bank initially for a period of six months. It shall be renewed periodically
B pending further orders to be passed by this Court.

25. With the above directions, these appeals will stand disposed of. However, in order to ensure compliance of the directions by all the parties concerned, call these appeals for passing final orders in the first week of December, 2014.
C However, in the meantime, if all formalities are complied with, it is open to the parties to mention for posting the above appeals for passing final orders.

Bibhuti Bhushan Bose Appeals disposed of