

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 7209-7210 OF 2015
(Arising Out of SLP (C) Nos.5902-5903 of 2015)

**BENGAL AMBUJA HOUSING
DEVELOPMENT LTD.**

... APPELLANT

Vs.

PRAMILA SANFUI AND ORS.

...RESPONDENTS

WITH

CIVIL APPEAL NOS. 7211-7212 OF 2015
(Arising Out of SLP (C) Nos.5906-5907 of 2015)

WEST BENGAL HOUSING BOARD

.....APPELLANT

Vs.

PRAMILA SANFUI AND ORS.

...RESPONDENTS

JUDGMENT

J U D G M E N T

V. GOPALA GOWDA, J.

Leave granted in all the Special Leave
Petitions.

2. The present appeals, filed separately, arise from the impugned judgment and order dated 21.11.2014 passed in R.V.W. No.78 of 2013 and judgment and final order dated 19.12.2012 passed in C.O. No.709/2010 by the High Court of judicature at Calcutta, whereby the High Court refused to interfere with the impugned judgments therein. The appeals arising out of S.L.P. (C) Nos.5902-5903 of 2015 have been preferred by the Bengal Ambuja Housing Development Ltd., whereas the appeals arising out of S.L.P. (C) Nos. 5906-5907 of 2015 have been preferred by the West Bengal Housing Board. Both sets of appeals are being disposed of by this common judgment.

3. As the facts in both the appeals are common, for the sake of convenience, we refer to the facts of the appeals arising out of S.L.P. (C) Nos. 5906-5907 of 2015, which are stated in brief hereunder:

The appellant, West Bengal Housing Board (hereinafter "the Housing Board") is a statutory body constituted under the West Bengal Housing Board Act, 1972 with the objective of providing affordable housing in the State of West Bengal. The appellant is the current owner of the suit property in question in the present appeals. The predecessor-in-interest of the appellant, late Gangadas Pal was the owner of suit land measuring 20.184 acres of land. A suit for partition being Title Suit No. 43 of 1956 was instituted in the land adjacent to the said land among the co-owners namely, Sanfui, Naskar, Mondal and Sardar family in the year 1956 before the learned Civil Judge (Senior Division), Alipore, the said suit was renumbered subsequently as Title Suit No. 121 of 1962. Gangadas Pal was not a party to the said suit at its inception. He was impleaded as Defendant No. 54 vide order of the learned Trial Court dated 14.08.1957. Gangadas Pal died in June

1958. One Mr. Ranjit Kumar Ganguly was appointed as the Receiver over the said suit properties and he took possession of the entire suit properties on November 30, 1958. After Gangadas Pal died, the defendant No.1 in the suit No. 121 of 1962, filed an application before the learned Subordinate Judge, Alipore, intimating that among others, defendant no. 54 (Gangadas Pal) had died during the pendency of the suit, following which the suit had abated against them, as per the provisions of Order XXII, Rules 3 and 4, Code of Civil Procedure, 1908. The learned Subordinate Judge, vide order and judgment dated 30.11.1973 dismissed the entire suit under Order XXII of the Code of Civil Procedure, 1908 holding that the suit had abated as against the deceased defendants (including Gangadas Pal) and the right to sue did not survive as against the other surviving defendants. The learned Subordinate Judge held as under:

"There is authority to hold that no formal order of abatement need be made as a suit or appeal abates automatically if no application for substitution is made within the prescribed time, i.e. within ninety days from the date of death and not from the date of knowledge. In that view of the matter, the order of abatement as recorded above by order no. 337, dated 15.9.73 was a mere formality. Sub-Rule 3 of Rule 4 of Order 22 CPC provides that the suit shall abate as against the deceased defendant in case no application is made under Sub-Rule 1 within the time allowed by law. Abatement takes place by operation of law and it is this crystal clear that the suit has abated against the deceased defendant nos. 9, 39, 54, 55, 57, 60, 62, 63 in due course of law...."

Aggrieved by the same, the plaintiffs therein filed Title Appeal No. 117 of 1974 before the learned District Judge, Alipore. The learned District Judge, vide order dated 20.09.1977 held that the order passed by learned Subordinate Judge was improper and not justified, and remanded the matter back to be considered afresh. The learned Civil Judge (Sr. Divn.) after considering the

matter afresh held that the plaintiffs had not made out any sufficient ground for the delay in filing of the application and refused to condone the delay and rejected the application of the plaintiffs therein. The learned Civil Judge (Sr.

Divn.) held as under:

"It is an established principal of law that the suit abates on and from the date of death of a party to the suit. From the order no. 315 dated 28.02.73 it is seen that the petition giving the information of the death of the defendants in question. The petitioners waited without any lawful exercise upon 4.4.73. On 4.4.73 they asked for letter particulars on the grounds mentioned in the Petition. By order no. 329 dated 18.3.73 the court directed the defendant no.1 to furnish particulars as regards the names and addresses of the deceased defendants nos. 9,39,40,54,55,57,60,62 and 63 by 11.6.73. From order no. 330 dated 4.6.73, it is seen that the defendant no.1 complied with the direction of the court, From all of these developments, it is palpably clear that the petitioners were in the know of the death of the defendants in question right from 28.2.73. At any rate when all particulars were furnished to them on 11.6.73, the petitioners ought to have filed the application for setting aside the abatement at least within 60 days from the date of abatement or order of the dismissal in terms of provisions of

articles 171 and 172 of the old Limitation Act. They filed the petition on 13.11.73 for the lapse of 90 days plus 60 days even the period is calculated, from 11.6.73."

This order of abatement has attained finality as no appeal has been preferred by the parties against the same.

4. In the meanwhile, the land of late Gangadas Pal was acquired by the State Government, and came to be vested in them, vide order dated 16.09.1971 passed in Big Raiyat Case No.5 of 1967. In 1991, the order of vesting was challenged by the heirs of Gangadas Pal, by way of a Writ Petition C.O. No. 11731 (W) of 1991. The learned single judge allowed the Writ Petition and quashed the order of vesting dated 16.09.1971. Aggrieved of the order passed in the above Writ Petition, the State Government preferred Writ Appeal before the Hon'ble Division Bench against the decision of the learned single judge. The learned Division Bench dismissed the appeal and affirmed the decision of

the learned single judge, vide judgment and order dated 18.04.1996. The State Government then preferred Civil Appeal No. 442 of 1998 before this Court, which was dismissed vide judgment and order dated 16.04.2003 in the case of **West Bengal Government Employees (Food and Supplies) Cooperative Housing Society Ltd. and Ors. v. Sulekha Pal (Dey) & Ors.** reported in (2003) 9 SCC 253, when this Court held as under:

"21. So far as the case on hand is concerned, it is seen from the materials on record that effective, actual and physical possession of the properties appears to have continued with the intermediary in question and subsequently in the possession of his heirs and the Collector/Revenue Officer could not be said to have either dispossessed them or taken over physical or khas possession of the estate and the rights comprised therein in the manner statutorily mandated and provided for under Section 10(2) of the Act and Rule 7 of the Rules made thereunder. The learned Single Judge and the Division Bench of the High court recorded concurrently that khas possession continued with the intermediary and after him his heirs and we find nothing contra concretely to disturb the same. The professed taking over of possession seems to be a mere entry on paper but not in conformity with the mandatory procedure necessarily to be observed before such

possession could be lawfully carried out. We are not concerned with the internal controversy between the Cooperative Housing Society of its claim to have been given with possession pursuant to the agreement of sale since for the purposes of the Act, it is the dispossession by the Collector/Revenue Officer in the manner envisaged in the statutory provisions under the Rules made thereunder that alone could get legitimatised for determining the rights of parties. Consequently, the order of the learned Single Judge as well as the order of the Division Bench, insofar as they sustained the right in the respondents herein to express their choice of retention, cannot be said to suffer from any infirmity in law so as to call for our interference. As a matter of fact, it is seen from the materials placed on record that after the order of the learned Single Judge, on the respondents exercising their choice, an order dated 2.8.1994 came to be passed by the Revenue Officer allowing retention of 25 acres of agricultural land, 10.16 acres of non-agricultural land and 0.06 acres of homestead land as per "B" Schedule to the said proceedings and declaring that 27.95 acres of agricultural land and 0.14 acres of homestead land as per details contained in the "C" Schedule to the said proceedings stood vested in the State. This order, which appears to have been made subject to the result of the appeal has to be construed in that manner and the rights of parties thereunder could and ought to be only in terms of and subject to the modified order of the Division Bench and nothing more..... The vesting is total and complete once

Notification is issued under Section 4 and got published by the combined operation of Sections 4 and 5 of the Act and what is secured under Section 6 is the right to hold on to the possession, subject to the limits prescribed in the statute by option for retention of the same before khas possession of the properties have been taken over as envisaged under Section 10(3) of the Act."

The ownership of the plot of land was thus retained by the legal heirs of Gangadas Pal as intermediaries as provided under Section 6 of the West Bengal Estates Acquisition, Act 1953.

5. On 08.06.2006, the plaintiff-respondents herein filed an application under Order XXXIX Rules 1 and 2, Code of Civil Procedure, 1908, in Title Suit No. 121 of 1962, seeking for grant of a temporary injunction restraining the parties from alienating, encumbering or creating third party interest on the scheduled properties. The learned Subordinate Judge, Alipore vide order dated 16.06.2006, allowed the application for temporary injunction, and passed the purported consent order even though the legal heirs of late Gangadas Pal

had not given their consent, directing the parties to maintain status quo with respect to the suit properties, and restrained them from selling, transferring, alienating inter party or with any third party or in any manner whatsoever from changing the nature and character of the suit property till disposal of the suit. On 03.07.2006, the learned Trial Court, at the instance of the plaintiffs-respondents directed the Officer in charge, Purba Jadavpur, Police Station to ensure compliance of the order dated 16.06.2006. On 07.07.2006, the learned Subordinate Judge, Alipore allowed the amendment application dated 28.01.2003, by which inter alia, the plot of land belonging to the heirs of Gangadas Pal was added to the suit schedule properties appended to the plaint. While passing the order, the learned Subordinate Judge held as under:

"On perusal of the instant applications under consideration and after hearing the submissions of the learned advocates court comes to the

conclusion that the amendment is formal in nature and would not change the nature and character of the suit, neither would it prejudice any of the parties. Besides, it is even observed by the Court that, the instant suit cannot proceed without amendment be allowed."

It is important to note at this stage that the heirs of late Gangadas Pal were not heard during the proceedings, as they were not parties to the suit.

6. On 19.08.2008, the appellant Housing Board acquired ownership of the property by way of five registered conveyance deeds the title and possession of the said 20.184 acres of land from the successors-in-interest of the late Gangadas Pal. On 19.12.2009, one of the plaintiffs (respondents herein) filed a petition before the learned Subordinate Judge, Alipore, praying that the Superintendent of Police, South 24 Paraganas and the Officer in Charge of Purba Jadavpur be directed to ensure compliance with the orders of

temporary injunction passed by the Trial Court on 16.06.2006 and 03.07.2006 in respect of the property in dispute. The learned Subordinate Judge vide order dated 13.01.2010, directed the Superintendent of Police to see that the consent order of temporary injunction granted by the Civil Court in favour of the plaintiffs-respondents in the original suit in respect of the suit properties in dispute was maintained by the parties. Aggrieved by the said order the Bengal Ambuja Housing Development Ltd. (appellant herein) filed an application, C.O. No. 709 of 2010 before the Hon'ble High Court under Article 227 of the Constitution of India questioning the correctness of the same. The High Court, vide its judgment and order dated 19.12.2012 dismissed the same. The High Court held that the third party (appellant Housing Board) had purchased the suit property *lis pendens*, and that no permission was taken from the court for the same. Thus, the provisions of

Section 52 of the Transfer of Property Act, 1882 would govern the transaction. The High Court, while dismissing the application filed by the Bengal Ambuja Housing Development Ltd., held as under:

"The present matter is confined to the implementation of an order of injunction passed on consent. As recorded above, upon hearing both the parties, an order of status quo was passed directing the parties not to change the nature and character of the suit property. When the applicant tried to intervene in the said order of status quo, the steps for rendering police help for the learned Receiver was taken and I think since an order of status quo was passed in consent was prevailing, the learned Court was justified for giving necessary directions upon the concerned police authority to take appropriate steps for the preservation and protection of the suit property and the Court was also competent to give directions to the police authority to render possible help so that the possession taken by the present Receiver, namely, Sri Ashoke Ray be maintained.

From the above facts, it is clear that the third-party/ petitioner herein had purchased the suit property *lis pendens* and that no permission was sought for from the Court to purchase the suit property.

So, the principle of lis pendens as provided in Section 52 of the Transfer of Property Act shall govern the issue.

.....

The learned Trial judge is justified to pass the impugned order. Record does not show that the petitioners had obtained any permission from the Court to purchase a portion of the suit property. They had purchased a portion of the suit property at their own risk while the said suit was pending and the property was in the possession of the learned Receiver."

7. Aggrieved by the order, the appellant Bengal Ambuja Housing Development Ltd. filed an S.L.P. (C) No. 8049 of 2013 before this Court challenging the legality of the said order, which petition was dismissed as withdrawn, by granting liberty to file the appropriate application before the High Court. The abovesaid appellant then filed a Review Application, R.V.W. No. 78 of 2013 before the High Court of Calcutta to review the judgment and order passed in C.O. No. 709 of 2010 urging various tenable grounds. The High Court by its judgment and order dated 21.11.2014 has dismissed

the Review Application. The High Court held that the grounds urged by the appellant in the Review Petition did not warrant a review of its judgment dated 19.12.2012. The High Court further held that it must be considered that the judge who rendered the judgment was no longer available with the Court and that the liberty that a judge has to correct himself upon his mistake being brought to his notice, is not available to another judge hearing the review and therefore the Review Petition was rejected by passing the order which is also impugned in this appeal. Hence the present appeals were filed by the above appellants.

8. We have heard the learned senior counsel for both the parties. On the basis of the factual evidence on record produced before us, the circumstances of the case and also in the light of the rival legal contentions urged by the learned senior counsel for both the parties, we have

broadly framed the following points which require our attention and consideration:-

1. Whether the appeals filed by the appellant Housing Board are maintainable in view of the fact that the earlier SLP filed by the appellant Bengal Ambuja Housing Development Ltd. was dismissed with liberty accorded to it to file appropriate petition before the High Court?
2. Whether the order of temporary injunction dated 16.06.2006 passed by the learned Subordinate Judge, Alipore, passed in respect of the suit property without impleading the vendors and the appellant Housing Board, which had acquired the right, title, interest upon the same can be enforced against them through the jurisdictional police as has been granted by the learned Subordinate Judge, Alipore, though the sale deed in favour of the Board is not challenged by the plaintiffs-respondents and the said order can be enforced against the appellants through jurisdictional police by an order dated 13.01.2010 passed in the Title Suit?
3. Whether the inclusion of the property of the Housing Board to the suit instituted in the Civil Court by way of an amendment by the plaintiffs-respondents which property was

conferred upon the legal heirs of late Gangadas Pal as intermediary right holder under Section 6 of the West Bengal Acquisition of Estates Act, 1953 and the institution of suit for partition by the contesting respondents is barred by the provisions of Sections 57 - B (2) (a), (b) and (c) of the Act of 1953?

4. What order?

Answer to Point No. 1

9. Mr. J.P. Cama, the learned senior counsel appearing on behalf of some of the plaintiffs-respondents strongly made the submission that since the earlier SLP of the appellant- Bengal Ambuja Housing Development Ltd. was dismissed as withdrawn by an order of this Court dated 13.02.2013 in the case of ***Bengal Ambuja Housing Development Limited & Anr. v. Pramila Sanfui & Ors.***, it is no longer open to the said appellant to challenge the correctness of the original order passed by the High Court by way of filing other SLPs again. In support of the above

legal submissions, the learned senior counsel has placed reliance on the decision of this Court in the case of **Kumaran Silk Trade (P.) Ltd. v. Devendra & Ors.**¹, wherein it has been held as under:

"Since the petition for special leave to appeal has already been dismissed by this Court, it is no more open to the petitioner to seek challenge to challenge the original order in this Court again by invoking Article 136 of the Constitution of India....

.....It is not open to the petitioner to challenge the original order again in this Court after withdrawing the earlier appeal, reserving only a liberty in itself of seeking a review of the original order."

10. The learned senior counsel also contends that an appeal is not maintainable against the decision of a court in a Review Petition. He places reliance on the decision of this Court in the case of **Shanker Motiram Nale v. Shiolalsing Gannusing Rajput**², wherein it has been held as under:

¹ (2007) 12 SCC 549

² (1994) 2 SCC 753

"This appeal is obviously incompetent. It is against an order of a Division Bench of the High Court rejecting the application for review of a judgment and decree passed by a learned Single Judge, who seems to have retired in the meantime. It is not against the basic judgment. Order 47 Rule 7 of CPC bars an appeal against the order of the court rejecting the review. On this basis, we reject the appeal."

This case has been relied upon by this Court in the cases of **Vinod Kapoor v. State of Goa**³ and **M.N Haider v. Kendriya Vidyalaya Sangathan**⁴

11. The learned senior counsel on behalf of the respondents submits that the earlier SLP filed by Bengal Ambuja Housing Development Ltd. was dismissed as withdrawn with liberty to file an appropriate petition before the High Court to review its order questioned in the earlier SLPs. Since liberty was not given to it to challenge that very same impugned order once again by filing SLPs in the event of review petition being dismissed, the appeals filed by Bengal Ambuja

³ (2012) 12 SCC 378

⁴ (2004) 13 SCC 677

Housing Development Ltd. once again challenging the very same order is not legally permissible. This contention has been very vehemently disputed by learned Attorney General, Mr. Rohatgi, who contends that the impugned order was not challenged by the appellant Housing Board before this Court, and that the interim order of temporary injunction and order dated 13.01.2010 directing the jurisdictional police to enforce the order of temporary injunction are not binding and cannot be enforced against it, as it was not a party to the original suit proceedings at any point of time. It is further contended that it has acquired valid interest and title upon the property in dispute as the legal heirs of late Gangadas Pal have executed the sale deed of the property in its favour, which land stood retained by them, in terms of the decision of this Court in the case of **Sulekha Pal** referred to supra. Thus, the order of temporary injunction passed in the

original suit proceedings in respect of the property in dispute without impleading either the vendors of the appellant Housing Board or the heirs of the late Gangadas Pal to the original suit proceedings cannot be said to have a binding effect on the appellant Housing Board. Therefore, the learned Subordinate Judge ought to have taken this aspect of the matter into consideration while directing the Superintendent of Police, South 24 Paraganas to enforce the interim order of temporary injunction against Bengal Ambuja Housing Development Ltd., which is the lease holder as the Board has granted lease hold rights in its favour to develop the property by joint venture to provide residential accommodation to the economically weaker sections of the society, which is a laudable object of the Board under the statutory provisions of the West Bengal Housing Board Act, 1972.

12. Thus, the aforesaid decisions of this Court upon which reliance has been placed by the learned senior counsel appearing on behalf of some of the plaintiffs-respondents cannot be applied either against the appellant Housing Board or its lessee or any other person claiming through it, as it was not a party to the proceedings and it did not challenge the said order earlier before this Court and therefore the Civil Appeals filed by it are maintainable.

Answer to Point Nos.2 and 3

13. The learned Trial Court passed an order of status quo on 16.06.2006, restraining the defendants therein from selling, transferring, creating third party interest or otherwise disposing of the suit scheduled properties. The said interim order of temporary injunction was purportedly a consent order. On 07.07.2006, though the legal heirs of late Gangadas Pal were not brought on record, the learned Trial Court allowed

the amendment application dated 28.01.2003, to amend the suit schedule properties.

14. Mr. Mukul Rohatgi, learned Attorney General and Mr. Dushyant Dave, learned senior counsel appearing on behalf of the appellants contend that the High Court failed to consider that neither the appellants herein nor the predecessor-in-interest of the appellants were parties to the Suit No. 121 of 1962 before the learned Subordinate Judge, Alipore, and thus, they were not aware of the order of temporary injunction that had been passed in the said suit proceedings. The learned senior counsel further contend that the High Court erred in not appreciating the fact that the said plot of land was not a part of the suit scheduled property originally. It appears to have been included in the suit schedule as one of the properties after the death of Ganga Das Pal and abatement of the suit proceedings against him without bringing his legal heirs on record. The status quo order passed

in the original suit sought to be enforced against the appellants was passed after the suit was abated against late Gangadas Pal and without bringing his legal heirs on record. The original suit had abated against him by order dated 30.11.1973, the suit being Title Suit No. 121 of 1962. Further, the land of late Gangadas Pal was only included in the suit properties on 07.07.2006, that too without making the heirs of late Gangadas Pal as parties to the said proceedings, or informing them about the same. It was further contended that by the learned senior counsel that the High Court failed to appreciate that neither the appellants, nor their predecessors in title and interest (the legal heirs of late Gangadas Pal) upon the property involved in these proceedings were made parties to the suit and therefore the question of giving consent by them to the interim orders dated 16.06.2006 and 13.01.2010 does not and cannot

arise, especially in light of the fact that the order of abatement of the original suit proceedings as against late Gangadas Pal had attained finality. It was further contended by Mr. Dushyant Dave, the learned senior counsel appearing on behalf of the appellant, Bengal Ambuja Housing Development Ltd. that the High Court had failed to consider the scope of the principle of *lis pendens* under Section 52 of the Transfer of Property Act, 1882. The property which has been purchased by the appellant Housing Board was not transferred by any party to the Title Suit No. 121 of 1962. The Information Slip issued by the Alipore Court makes it clear that the names of the heirs of late Gangadas Pal were not included as parties to the Title Suit No. 121 of 1962.

15. On the other hand, Mr. Sanjay Hegde, learned senior counsel appearing on behalf of the respondent- Receiver contends that the appellants presently do not have the *locus standi* to

challenge any subsequent orders passed in the Title Suit No. 121 of 1962. The property in dispute, upon which the claim is made by them, being a portion of the suit property is governed by the principle of *lis pendens* as provided under the Transfer of Property Act, 1882. The learned senior counsel further contends that the High Court has rightly observed that no serious prejudice has been occasioned to the appellants on account of the order passed by the learned Subordinate Judge to enforce the interim order of temporary injunction through the jurisdictional police. An order of status quo had been passed by Trial Court as far back as 16.06.2006. The parties were restrained from selling, transferring, alienating or otherwise disposing of the suit property to any third party in any manner whatsoever. There was also an order of temporary injunction restraining the parties from changing the nature and character of the suit property. The

property in question being a part of the suit property could not have been transferred in favour of the appellant Housing Board during pendency of the restrain order. Therefore, it is urged by the learned senior counsel that no indulgence ought to be shown to the appellants in any manner whatsoever to interfere with the impugned orders by this Court in exercise of its appellate jurisdiction.

16. We have heard Mr. Mukul Rohatgi, learned Attorney General and Mr. Dushyant Dave, the learned senior counsel appearing on behalf of the appellant and Mr. Sanjay Hegde and Mr. J.P. Cama, the learned senior counsel appearing on behalf of the respondents and have perused the documents produced before us in Civil Appeals in support of their respective claims to consider the rival legal contentions urged on behalf of the parties and answer the points that are framed in these appeals.

17. We agree with the contentions advanced by the learned senior counsel appearing on behalf of the appellants. The original suit instituted by the plaintiff-respondents against late Gangadas Pal had abated vide order of the learned subordinate judge, Alipore dated 30.11.1973. The said order has attained finality as no appeal has been filed questioning the correctness of the same. By order dated 07.07.2006 passed by the learned Subordinate Judge, the property in question of late Gangadas Pal was added as part to the suit schedule properties by way of an amendment to the plaint by the time his legal heirs had already acquired intermediary rights under Section 6 of the West Bengal Estates Acquisition Act, 1953. The heirs of late Gangadas Pal were not made parties to the said Title Suit proceedings. On 03.07.2006, the learned subordinate judge passed an order granting temporary injunction restraining the parties to the suit from alienating or transferring the suit

property. A perusal of "Annexure P/10" which is the Information Slip dated 17.02.2010 issued by the office of the learned Trial Court in Title Suit No. 121 of 1962, makes it amply clear that the heirs of late Gangadas Pal were not made parties to the suit. The appellant Housing Board purchased the land in question from the heirs of late Gangadas Pal on 19.08.2008, as is evidenced from the conveyance deed "Annexure P-9". The appellant Housing Board was not a party to the Title Suit at any point of time. It has purchased the land in question from its owners. This property was included in the suit schedule properties by way of amendment to the plaint after an application was allowed by order dated 07.07.2006. The plaintiffs-respondents herein did not have any right to get the said land included as part of the suit schedule properties for partition, and the learned Subordinate Judge erred in allowing the application to amend the suit

schedule to include the property in question. The learned Subordinate Judge has erred in passing order of temporary injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, in respect of the property in question after it was included to the suit schedule as order of temporary injunction can be granted against only the parties to the suit property. Further, the grant of police protection without impleading the appellants to the original suit proceedings is also not legally permissible and the therefore the said order is liable to be set aside. The High Court ought to have considered the relevant fact that the appellants were not parties to the suit, and the suit had abated as against late Gangadas Pal. Thus, the order of temporary injunction passed by the learned Subordinate Judge on 03.07.2006 does not apply to the land in question which was sold to the appellant Housing Board.

18. Further, in the instant case, the order of temporary injunction dated 03.07.2006 was purportedly granted by consent is also not sustainable in law. The question of consent being given by either the appellant Housing Board or the predecessors in interest who are its vendors did not arise as they were not parties to the said suit. It is a well settled principle of law that either temporary or permanent injunction can be granted only against the parties to a suit. Further the purported consent order in terms of Order XXXIX of the Code of Civil Procedure is only binding as against the parties to the suit. In such a case, the order of the Subordinate Judge to grant police protection against the appellant Housing Board which is enjoying the property is erroneous in law and is liable to be set aside.

19. The original owner in the instant case, late Gangadas Pal was an intermediary in *khas* possession of the land in question in terms of

Section 6 of the West Bengal Estates Acquisition Act, 1953. Thus, the learned Subordinate Judge did not have the jurisdiction to entertain any suit with respect to the said property, in light of the provision of Section 57B (2) (a), (b) and (c) of the West Bengal Estates Acquisition Act, 1953, which states as under:

"57B. Bar to jurisdiction of Civil Court in respect of certain matters.-

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(2) No Civil Court shall entertain any suit or application concerning any land or any estate, or any right in such estate, if it relates to---

(a) alteration of any entry in the record-of-rights finally published, revised, made, corrected or modified under any of the provisions of Chapter V,

(b) a dispute involving determination of the question, either expressly or by implication, whether a raiyat, or an intermediary, is or is not entitled to retain under the provisions of this Act such land or estate or right in such estate, as the case may be, or

(c) any matter which under any of the provisions of this Act is to be , or

has already been, enquired into, decided, dealt with or determined by the State Government or any authority specified therein."

In view of the fact that the right, title and interest upon the disputed property has been settled in favour of the vendors of the appellant Housing Board, who are the legal heirs of the late Gangadas Pal, who was an intermediary of the land in question in terms of Section 6 of the West Bengal Estates Acquisition Act, 1953, adding of the property in question to the suit schedule property in dispute cannot be the subject matter of partition in view of the express provisions of the West Bengal Estates Acquisition Act, 1953 which excludes the jurisdiction of the civil court in respect of any rights in such estate as entry in record of rights is published. In the instant case, the names of the heirs of late Gangadas Pal were included in the record of rights in pursuance of the order passed in the Writ Petitions in connection with the Big Raiyat Case No. 5 of 1967,

which order was affirmed by this Court in the case of **Sulekha Pal**, referred to supra.

20. The amendment of plaint to include the suit property of the heirs of late Gangadas Pal was done in pursuance of the order dated 07.07.2006, wherein the learned Subordinate Judge, Alipore added the land in question which has been sold to the appellant Housing Board, to the schedule of suit lands in Title Suit No. 121 of 1962. The same is erroneous in law and therefore, liable to be set aside as the said order is not binding on the appellant for the reasons stated supra.

Answer to Point No. 4

21. The order of temporary injunction passed in favour of the plaintiffs-respondents is accordingly set aside in so far as it relates to the property of the appellant Housing Board is concerned which property was included by way of an amendment to the plaint.

22. At the end, it was brought to our notice by Mr. Sanjay Hegde, the learned senior counsel appearing on behalf of the Receiver that the appellant Housing Board has entered into a Joint Venture Settlement with Bengal Ambuja Housing Development Ltd. without following the mandatory procedure of inviting applications to participate in the tender to get the leasehold rights for the joint development of the property in question to discharge its statutory obligation. It was further contended by the learned senior counsel that in not doing so, the action of the appellant Housing Board has become arbitrary, unreasonable and unfair as it amounts to conferring largesse upon the appellant Bengal Ambuja Housing Development Ltd. The learned senior counsel contended that this is impermissible in law, as has been held in a catena of cases by this Court in relation to the property owned by the Central or State Government or Statutory Boards or Corporations or Companies

owned by either the Central or State governments, including the case of **Ramana Dayaram Shetty v. The International Airport Authority of India**⁵, which was relied upon in the more recent decision of **Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh**⁶. The learned senior counsel further contends that this court has laid down the law with reference to Article 14 of the Constitution of India keeping in view as to how to alienate public property by granting reasonable rates and granting agency of joint venture without following the mandatory procedure of inviting applications from the competent persons so that the persons may come forward and participate in the proceedings to give fair and better offer in the interest of public. That has not been done by the appellant Housing Board in the instant case. Thus, public interest has been adversely affected as a result of the arbitrary and unreasonable action on the

⁵ AIR 1979 SC 1628

⁶ (2011) 5 SCC 29

part of the appellant Housing Board in granting leasehold rights for the joint development of the property in question. The learned senior counsel has prayed that the appellant Housing Board be directed to dispose of the property and make good the schemes in the interest of the beneficiaries and utilize the same for their benefit.

23. The above contention of the learned senior counsel cannot be dealt with by us, as the same is not in controversy in the present case before us. The aggrieved parties are at liberty to seek the above mentioned prayer in an appropriate proceeding.

24. Since we have answered the points formulated in these appeals in favour of the appellant Housing Board by recording the reasons in the judgment, we have to allow the appeals of the appellant Housing Board. We pass the following order:

- a) The appeals of the appellant Housing Board are allowed by holding that *ex parte* interim order of

temporary injunction passed on 16.06.2006 by the learned Subordinate Judge, Alipore in Title Suit No. 121 of 1962 in respect of the property in question purchased from the legal heirs of the late Gangadas Pal who are declared as intermediaries under Section 6 of the Act of 1953 and therefore the same are not binding on this appellant as it is not a party to the proceedings and the Civil Court did not have the jurisdiction to deal with the said property, as per Section 57 B (2) (a), (b) and (c) of the West Bengal Estates Acquisition Act of 1953.

b) Since the interim order of temporary injunction is not binding on the appellant Housing Board and cannot be operated against them, therefore the question of enforcing the same against the appellant Housing Board or its agents or any person claiming through it, through the jurisdictional police to help the plaintiffs-respondents as has been granted by the learned Subordinate

Judge by his orders dated 03.07.2006 and 13.01.2010 at the request of the plaintiffs-respondents, does not arise.

c) In view of the appeals of the appellant Housing Board being allowed, the appeals filed by the Bengal Ambuja Housing Development Ltd. are disposed of as they are unnecessary. All Interlocutory Applications are disposed of.

.....J.

[T.S. THAKUR]

.....J.

[V. GOPALA GOWDA]

.....J.

[R. BANUMATHI]

New Delhi,
September 18, 2015