

(1999) 10 CAL CK 0016
In the Calcutta High Court

Case No : Civil Appellate Jurisdiction, G.A. No. 2612 of 1999, A.P.O.T. No. 496 of 1999

B.L.C. Private Ltd. and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-10-1999

Acts Referred:

Calcutta Municipal Corporation Building Rules, 1990 — Rule 16, 4(4)
Urban Land (Ceiling and Regulation) Act, 1976 — Section 29, 33, 6(1), 6(2), 8

Citation : (2000) 2 CALLT 557

Hon'ble Judges : Ranjan Kumar Mazumdar, J; Altamas Kabir, J

Bench : Division Bench

Advocate : Mr. Anindya Mitra and Mr. Pradip Ghosh, for the Appellant; Mr. L.C. Behant, Mr. Tapan Dutta, for the Respondent

Judgement

A. Kabir, J.—On consent of the parties, the appeal is also treated on the day's list and is taken up for disposal along with the application for stay of operation of the Judgment and order appealed against.

2. The facts involved in this appeal indicate that pursuant to a notice issued by the competent Authority u/s 6(2) of the Urban Land (Ceiling & Regulation) Act, 1976, the appellants filed a Return u/s 6(1) of the said Act. Thereafter, on the basis of the said Return, the Competent Authority began proceedings, being U.L.C. Case No. 6(1)/127/ V-20/78, and upon enquiry prepared a draft statement u/s 8(1) of the above Act.

3. On 29th September, 1981, the objection filed by the appellants/ petitioners herein was rejected by the Competent Authority and directions were given for preparation of final statement u/s 9 of the aforesaid Act. On 19th April, 1983, the Competent Authority served the final statement u/s 9 of the above Act on the appellants/petitioners. An appeal taken by the appellants against the said statement u/s 33 of the above Act was, ultimately, dismissed on 9th April, 1984. On 3rd September, 1984, the petitioners/appellants filed a writ petition in this

Court, being Civil Rule No. 16872(W) of 1984. which was disposed of on 16th May, 1990. In view of the fact that land acquisition proceedings had also been commenced in respect of the self-same property, the proceedings under the Urban Land (Ceilling & Regulation) Act, 1976 was held to be without Jurisdiction and the said proceedings, along with the order of the Appellant Authority, were quashed. It may be mentioned in this connection that a review petition was filed on behalf of the respondents, but the same was withdrawn on 18th September, 1998.

4. In the meantime, on 12th October, 1991, the appellants submitted a building plan to the Calcutta Municipal Corporation for sanction. At this stage it may be mentioned that sub-Rule (4) of Rule 4 of the Calcutta Municipal Corporation Building Rules, 1990 was sought to be substituted by a Notification dated 29th March, 1993, and in the substituted Rule it was made a condition precedent that the notice to be given in writing to the Municipal Commissioner for grant of sanction to the Building Plan was to be accompanied by a "No Objection Certificate" from the Competent Authority under the Urban Land (Ceilling & Regulation) Act, 1976. A proviso was, however, added to the said Rule to the effect that the requirements as mentioned in sub-Rule (4) of Rule 4 of the above Act would be deemed to have been waived on the failure of the competent Authority to furnish the Certificate within three months from the date of reference to it.

5. In keeping with the aforesaid provisions, the appellants/petitioners applied to the competent Authority under the aforesaid Act for the issuance of a "No Objection Certificate" for the purpose of sanction of the building plans submitted to the Calcutta Municipal Corporation. It appears that no such Certificate was issued in terms of sub-rule (4) of Rule 4 of the aforesaid Rules and under the proviso the deeming provisions came into effect.

6. On 23rd November, 1994, the appellants once again made an application to the Competent Authority under the 1976 Act for the purpose of compliance with sub-Rule 14) of Rule 4 of the Calcutta Municipal Corporation Building Rules, 1990. Several reminders were thereafter issued but, ultimately, as it appears, no such "No objection Certificate" has been issued by the Competent Authority under the Urban Land (Ceilling & Regulation) Act, 1976.

7. On 16th February, 1999, a resolution appears to have been adopted by the Municipal Building Committee recommending sanction of the Building plan submitted by the appellants on 25th February, 1999. The Competent Authority under the 1976 Act addressed a letter to the City Architect, Calcutta Municipal Corporation, being annexure "F" to the application for stay, requesting him not to sanction any Building plan in respect of the premises in question since a fresh proceedings had been initiated and a draft statement u/s 8(1) of the above Act had also been served on the owner of the premises.

8. Challenging the said direction given by the Competent Authority, the

appellants filed a fresh writ application, being W.P. No. 1001 of 1999, inter alia, for a direction upon the Municipal Authorities to sanction the Building plan having regard to the deeming provision in the proviso to sub-Rule (4) of Rule 4 of the Calcutta Municipal Corporation Building Rules, 1990. The said writ petition was disposed of on 11th May, 1999, with a direction upon the Competent Authority to serve a copy of the draft statement upon the appellants within a fortnight and thereafter the appellants would be entitled to file their objection and the proceedings were to be completed within a period of four months from the date of submission of the Return by the writ petitioners/appellants.

9. The said order of the learned single Judge is the subject matter of the appeal before us.

10. At the outset it may be indicated that, although, the main relief in the writ petition appears to have been for a direction upon the Municipal Authorities to sanction the Building plan, the same appears to have been lost sight of in view of the fresh proceedings said to have been initiated under the Urban Land (Ceiling & Regulation) Act, 1976.

11. Appearing in support of the appeal. Mr. Anindya Mitra, learned Advocate, submitted that since the proceedings on the basis of the Return filed earlier had been quashed in Civil Rule No. 16672(W) of 1984. it must be deemed that the entire proceedings from the point of issuance of notice u/s 6(2) of the above Act and the Return filed pursuant thereto must be deemed to have been quashed also and, if at all, the authorised concerned would have to start the proceedings afresh from the very initial stage.

12. It has also been submitted that, in any event, the proceedings under the Urban Land (Ceiling & Regulation) Act, 1976, could have no relation to the application made by the appellants for sanction of the Building plan submitted by them, having particular regard to the proviso of sub-Rule (4) of Rule 4 of the said Building Rules, Mr. Mitra urged that even the directions given by the learned single Judge for service of a copy of the draft statement prepared u/s 8(1) of the above Act could not be supported, inasmuch as, the earlier proceedings had been quashed namely on the ground that simultaneous proceedings under the Land Acquisition Act had been commenced and some of the properties included in the Return had been acquired in the said proceedings. Mr. Mitra urged that in the changed circumstances an opportunity should be given to the appellants to file a fresh return on the basis of which further steps could be taken by the Urban Land Ceiling authorities.

13. Appearing for the State of West Bengal, Mr. Tapan Dutta, learned Advocate, submitted that, in fact, the submissions made by Mr. Mitra regarding the lands said to have been acquired under the Land Acquisition Act had been duly taken care of and the fresh draft statement was prepared on the basis of the Return which had been filed earlier, but after excluding the lands which had been acquired and that there could, therefore, be no reason for the appellants to make

a complaint that the draft statement has been prepared on the basis of a statement which stood altered by the acquisition proceedings. Mr. Dutta also urged that quashing of the proceedings did not and could not mean that the Return u/s 6(2) of the above Act also stood quashed and that fresh proceedings would obviously mean proceedings taken from the stage of section 8(1) of the 1976 Act on the basis of the Return which has already been filed. Mr. Dutta also submitted that, in fact, no notice u/s 6(2) of the above Act had been issued and a voluntary Return had been filed by the appellants u/s 6(1) of the above Act. Mr. Dutta urged that in the circumstances the appeal was misconceived and was liable to be dismissed.

14. Appearing for the Calcutta Municipal Authorities, Mr. Behani sought to urge that sub-rule (4) of Rule 4 of the Building Rules could not and should not be read in isolation of the provisions of Rule 16 which provides the grounds for refusal for grant of sanction to a Building plan. According to Mr. Behani, the provisions of Clause (i) of Rule 16 would have a controlling effect over the provisions of sub-Rule (4) of Rule 4 of the Building Rules, since the provisions of section 29 of the 1976 Act would have a direct bearing on the question of grant of sanction to the Building plan.

15. Mr. Behani urged that having regard to the above, no direction should be given to the Municipal Authorities to grant sanction to the Building plan, till such time as the requirements of sub-Rule (4) of Rule 4 of the Building Rules were fully not by the appellants, notwithstanding the provisions of the proviso to sub-Rule (4) of Rule 4 of the Building Rules.

16. We have carefully considered the submissions made on behalf of the respective parties and we are of the view that the two issues involved in the writ petition, viz. the grant of sanction of the Building plan submitted by the appellants, must be considered separately from the proceedings under the Urban Land (Ceiling & Regulation) Act, 1976. In our opinion, when a specific provision has been made in the proviso to sub-Rule (4) of Rule 4 of the Building Rules, the same would have an over-riding effect over the provisions of Rule 16(1) of the said Building Rules, which are general in nature. We are also of the view that section 29 of the 1976 Act cannot entitle the Competent Authority under the 1976 Act to issue a notice upon the City Architect, as has been done in the instant case, requesting that sanction should not be granted to the Building plan, having particular regard to the proviso to sub-Rule (4) of Rule 4 of the Building Rules. As far as grant of sanction to the Building Plan is concerned, the Municipal Authorities are bound by the Rules relating to grant of such sanction and as far as the Urban Land Ceiling Authorities are concerned they are at liberty to take such steps as they may be advised u/s 29 of the above Act even after and if sanction is granted to the Building plan submitted by the appellant's.

17. We are of the view that the ends of Justice will be fully met if a direction is given to the appellants to file a fresh Return u/s 6(1) of the 1976 Act on the basis of the lands held by them on 17th February, 1976, the appointed day under

the said Act, after excluding the lands which have been sought to be acquired in the acquisition proceedings.

18. We, accordingly, dispose of the appeal and the application for stay with a direction upon the appellants to file such fresh return u/s 6(1) of the above Act on the basis of the lands held by them on the appointed day, viz. 17th February, 1976, after excluding the lands which were acquired in the land acquisition proceedings, within six weeks from date. The competent Authority will, thereafter, be entitled to proceed afresh u/s 8(1) of the above Act and to serve a copy of the draft statement on the appellants and to proceed from that stage in accordance with the provisions of the said Act. There will be a further direction upon the authorities of the Calcutta Municipal Corporation to act in terms of the resolution of the Municipal Building Committee dated 16th February, 1999, without insisting upon the "No objection Certificate" contemplated under sub-rule (4) of Rule 4 of the Building Rules, having particular regard to the proviso thereto. The matter be considered and disposed of by the Calcutta Municipal Corporation authorities also within six weeks from the date of communication of this order.

Both the appeal and the application are thus disposed of with the aforesaid directions and observations.

There will be no order as to costs.

Let certified copy of this Judgment and order be made available to the parties as expeditiously as possible.

Department and all parties to act on a signed copy of the operative portion of this order on the usual undertakings.

R.K. Mazumdar, J.

19. I agree.

20. Appeal and application disposed of