

(1991) 02 CAL CK 0024
In the Calcutta High Court
Case No : Matter No. 2197 of 1990

Circular Investment Trust Private Limited and Another	APPELLANT
Vs	
The Calcutta Municipal Corporation and Others	RESPONDENT

Date of Decision : 14-02-1991

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 391(5), 393(2), 396(20)
Calcutta Municipal Corporation Rules, 1951 — Rule 47, 47(2), 48, 48(1), 48(4)

Citation : (1991) 2 CALLT 460

Hon'ble Judges : Ajoy Nath Ray, J

Bench : Single Bench

Advocate : Pradip Ghosh and Sumit Panja, for the Appellant; A. Das Adhikari, for the Respondent

Final Decision : Allowed

Judgement

Ajoy Nath Ray, J.—This, is an application seeking to challenge a refused of sanction on the part of the Calcutta Municipal Corporation, the said refusal being communicated by the impugned document (being Annexure "B" to the petition) dated 29.3.1980/16.4.1990. By the said refusal of sanction the Municipal authorities have called upon the writ petitioners to submit a registered undertaking for non-eviction of the tenants as stated in the application form.

2. In the application form lodged by the writ petitioners, under item 26, the writ petitioners had put in the particulars, of the tenants who are now admittedly in occupation and the petitioners had also stated that registered undertaking would be filed. Particulars of that prospective undertaking were somewhat vague in the application that was put in. In the writ petition the petitioners have asked for relief from such a statement made by them in the application.

3. In my opinion, what the writ petitioners stated in the application is neither here nor there. If the Municipal authorities cannot insist upon an undertaking of the nature complained of here, i.e. if prior to sanction of a building plan they cannot call for an undertaking of protection of tenants from the landlords who

seek for sanction, what the landlords or the proposed builders wrote in the application form would be of complete irrelevance.

4. In the case of *K.B. Properties Private Ltd. v. Nandu Tea Company Ltd.*, reported in AIR 1966 Cal. 266 (and alternatively at 1985 (2) CWN 137) Justice Chittatosh Mukherjee speaking for a Division Bench said in paragraph 6 that even if an affidavit is filed on behalf of a particular landlord with regard to, his future dealings with his tenants, such affidavit would not and could not affect the rights or liabilities of the landlords and the tenants amongst themselves and the affidavit in the Corporation Department would, really, be useless.

5. In an unreported judgment delivered Justice Mukul Gopal Mukherji in Matter No. 4246 of 1988 (*Joy Narain Shaw and Anr. v. City Architect of Calcutta Municipal Corporation and Ors.*) was produced before me. In that judgment a Dictated Order was passed by His Lordship on 28.8.1990. His Lordship reasoned to this effect that within the framework of the rules being part of Schedule XVI of the Act, nothing appeared, to His Lordship, to give power to the Deputy City Architect to call for such a protection of tenants from the proposed landlord/builders. In that judgment His Lordship sends the matter back for reconsideration by the Corporation.

6. Learned Counsel, appearing on behalf of the Corporation, has made two points. First, he said that as appearing from Sections 391(5), 393(2), 396(20) of the Calcutta Municipal Corporation Act, 1980 and as from Rules 47(2), 48(1), 48(4)(a), 48(5)(b), 48(4)(d) explanation, 48(1) (b), 48(6), 51, 52(5), 55(2) and 55(6) several words of general application could be seen and these general words included, in, them, the power to call for an undertaking to evict the tenant. Secondly, learned Counsel relied upon the aforesaid statements under item 26 made in the sanctioned plan. But I need not dwell upon the second point, as I have already said, that if the Municipal authorities do not have power to call for such undertaking, the statements made in the sanction application to that effect would be of no effect. In fact, the authorities, in that view of the matter, would be compelled to disregard or expunge such a statement in the application. The sole point, therefore, is whether the general words in the aforesaid provisions permit the authority to call for such an undertaking from the landlord.

7. In my opinion, those general words, clearly, do not give such an authority. As for example, I take Rule 55(2). This, says that the Commissioner can at the time of granting permission impose such condition with the Act that he may think fit. Now, "consistent with this Act", does not mean any and every condition which does not violate the Calcutta Municipal Corporation Act. Let us suppose that the Municipal authorities take it to themselves that along with every sanction they will call for this imposition that the person proposing to build must keep one room on the Ground Floor for the establishment of a charitable dispensary. The purpose would no doubt be a public purpose. It would also not be inconsistent with any of the provisions of the Calcutta Municipal Corporation Act. But the Act

does not envisage such a power of imposition and such a condition would be thoroughly outside the scope and power of the Municipal authorities.

8. The reason for this is quite clear. When the general words are used in a Statute permitting of doing things not inconsistent with the provision of the Act, such general words must mean only these unspecified things relating to the Act which have sufficient nexus with the general purpose and object of the Act itself. Something absolutely extraneous to the Act which is a subject matter of such a different legislation cannot be usurped by reason of general words in a particular Statute itself. That would be an excess of jurisdiction.

9. Without multiplying examples various impositions can be thought of which would be logically not inconsistent with the Calcutta Municipal Corporation Act, while the same would be incurring upon other fields of the law, in the garb of condition of building sanction. This cannot be permitted and the jurisdiction in the writ court is specifically reserved for checking such excess of jurisdiction committed by the authorities in this manner.

10. The case reported in Dinesh Chandra Banerjee and Others Vs. Corporation of Calcutta and Others, was relied upon. This case was of B. C. Banerjee v. Corporation of Calcutta, where Justice Sabyasachi Mukherji when His Lordship was sitting in Calcutta delivered a judgment to the effect that certain informations called for by the Municipal authorities were so called for within their jurisdiction. A request for further particulars or requests for further information are a type of thing absolutely different from asking for an undertaking giving up substantially the property rights of an individual citizen, in the manner also affecting the rights of several citizens amongst themselves. The case of B. C. Banerjee, therefore, in my opinion, is not opposite.

11. The other aspect of the matter is that there is no law which permits the Municipal authorities to enforce an undertaking even if given to them whereby the landlord agrees not to evict his tenant. It is inconceivable that because of an undertaking given by the landlord to the tenant the Calcutta Corporation will seek to enforce the undertaking in a possible civil litigation for eviction that right afterwards be instituted by the landlord against the tenant. If such is the position at law, there is no reason why a statutory authority was assisting upon an undertaking which they cannot enforce and which must, therefore, be only in the nature of a cloud upon the future rights of the parties, not helping them in any manner, but impeding the understanding of their respective rights and liabilities. - The public and the statutory authorities are not supposed to act in this manner.

12. In this view of the matter, I have no hesitation in allowing the application and quashing the said document dated 29.3.1990/18.4.1990. The Municipal authorities are directed forthwith to reconsider the application of the petitioners for sanction of building plan and in so considering the matter they shall not in any manner be guided by the future steps that might or might not be taken or proposed to be taken by the writ petitioners for eviction of the tenants.

13. The Municipal authorities shall also completely keep out of consideration any statement made by the writ petitioners in item 26 of the sanction application, including the undertaking which they wrote would be submitted prior to sanction. The Municipal authorities, i.e., the respondents herein shall dispose of the application for sanction within 4 weeks hereof. If the sanction is for any reason refused, such refusal must be made by way of a completely detailed reasoned Order. If, however, the authorities see it fit to grant the application they may or may not pass any reasoned order as might appear just or legal in the circumstances to them.

The application succeeds and costs are assessed at 150 G.Ms.

All parties are directed to act on a signed copy of this Dictated Order countersigned by the Court Officer on the usual undertaking.