

(2022) 11 CAL CK 0005
In the Calcutta High Court
Case No : C.O. No. 2327 Of 2021

David Mantosh & Ors.

APPELLANT

Vs

Apollo Gleneagles Hospitals Ltd. & Ors.

RESPONDENT

Date of Decision : 04-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 227

Urban Land (Ceiling & Regulation) Act, 1976 — Section 2(i), 4, 6(1), 9, 10(1), 10(3), 33, 33(1)

Limitation Act, 1963 — Section 5, 14

Citation : (2022) 11 CAL CK 0005

Hon'ble Judges : Ajoy Kumar Mukherjee, J

Bench : Single Bench

Advocate : Tanmoy Mukherjee, Souvik Das, K. Raihan Ahmed, Rudranil Das, S.R. Das, Aniruddha Chatterjee, Ajay Gaggar, Shukti Naga, Anirban Ray, Raja Saha, Shayak Chakraborty

Final Decision : Dismissed

Judgement

Ajoy Kumar Mukherjee, J

1. Being aggrieved and dissatisfied with the communication being No. 463-UL/O/ APC-4/2021 dated November 26, 2021 passed by the Special Secretary & Appellate Authority under section 33 of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter called as Act of 1976), present application under Article 227 of the constitution of India has been preferred. It is alleged by the petitioners that they had preferred an appeal under section 33 of the Act of 1976, before the Appellate Authority, urban land ceiling Branch, Kolkata, which was registered as file No. UDMA-21011(13)/3/2021-ESTT-ULC SEC Dept. of UDMA. In the said appeal the petitioners herein prayed for declaration that Notification No. 53-X-U.L. (CAL) dated February 12, 1990 is null and void and the petitioners are owners of premises no. 60, Canal Circular Road, Kolkata and entitled to possession of the premises in question. One application under section 5 read with Section 14 of the Limitation Act was also filed along with the said

appeal explaining the delay in preferring the appeal. But by the impugned order it was informed to the petitioners that the aforesaid appeal dated 27.08.2021 is not maintainable as the same is well beyond the stipulated 30 days as envisages in section 33(1) of the urban land (Ceiling & Regulation) Act, 1976. Petitioners further alleged that they did not get any opportunity to place their case before the special secretary and the Appellate Authority and impugned order dated November 26, 2021 was passed without hearing the petitioners.

2. The present case has got a chequered history. The aforesaid property in question i.e. 60, canal Circular Road, Kolkata-700054 along with its adjacent lands was sold by Mr. Monilal Guin and Mr. Bijoy Kumar Guin to M/s. Hindustan Housing on 15.06.1957. M/s. Hindustan Housing subsequently transferred the said properties to M/s. Orient Beverage Limited (herein after called as M/S. OBL) through registered deed dated 30.11.1962.

3. The aforesaid Act of 1976 came into force on 17.02.1976. Aforesaid M/S OBL claiming to be a "person" under section 2(i) of the Act and claiming "to hold" the suit property under section 2 (1) of the Act in excess of the ceiling limits specified under section 4 of the Act, filed a statement under section 6(1) of the Act before the competent authority but the competent authority by order dated 27.09.1988 rejected the prayer made by M/S OBL and as such M/S OBL agreed to surrender the possession of the entire excess land held by them beyond the prescribed ceiling limit and accordingly M/S OBL surrendered their possession on the said land along with adjacent lands on 04.01.1990 situated at Canal Circular Road, Kolkata in favour of the State. M/S OBL prepared to surrender subject to compensation as provided under the Act. On 08.02.1990 the competent authority served final statement under section 9 of the Act on M/S OBL which led to the issuance of the notification by the State under Section 10(1) of the Act which was duly published in the gazette on 15.02.1990 inviting objections from the general public. No objection was received from any person pursuant to said notification and as such final notification under section 10(3) was issued on 11.05.1990 and with issuance of said notification under section 10(3) the suit property was vested to the State of West Bengal free from all encumbrances. The competent authority on 23.05.1990 served notice on M/S OBL calling upon them to physically surrender the possession of the suit property to the State which was done on 28.05.1990.

4. Subsequently the State of West Bengal on 04.04.1991 allotted said property along with adjacent land measuring around 34,147 square meters bearing premises no. 58,59,60,61,62,72,73,79 & 81 at canal circular Road to M/S Apollo Gleneagles Hospital (respondent No. 1 herein) on long term lease of 30 years and they were also given possession of the land by the State on execution of lease deed dated 02.12.1994 and thereafter said respondent no. 1 set up a Hospital which is running for a considerable period of time.

5. In the year 1992 the aggrieved petitioner suddenly woke up and claimed that they are the owner of the said property as well as part of the adjacent properties

and feeling aggrieved by the aforesaid notification under section 10(3) of the Act of 1976 dated 11.05.1990, filed a writ petition to challenge the same before this High Court being W.P. No. 1382/1992. The single judge of this High court vide order dated 26.08.1992 allowed the writ petition and quashed the aforesaid notification dated 11.05.1990. Respondent no. 1/ hospital felling aggrieved by the said order of the Single Bench, filed writ appeal being No. 324/1993 before the Division Bench of this court. However, the Division Bench of this court vide order dated 03.04.1997 allowed the appeal and set aside the order of the single judge and dismissed the writ petition which resulted the notification dated 11.05.1990 issued by the State of West Bengal to be legal and valid. Feeling aggrieved by said order passed by the Division Bench one SLP (c) of 12726/97 was preferred before the Apex Court and Apex Court by its order dated 28.07.1997 dismissed said petition with the observation that if the aggrieved petitioner has any appropriate remedy under the Act or any other law it would be open to him to avail the same in accordance with law. In view of the aforesaid observation of the Apex Court the aggrieved persons filed civil suit being T.S. No. 101/98 in the court of Additional District Judge, Sealdah, with a prayer for declaration, ownership and recovery of possession of the suit property. In the said suit plaintiffs prayed for a declaration that the entire proceeding which culminated in the issuance of the notification dated 12.02.1990 be declared as null & void. In the said suit the State of West Bengal as well as the Hospital/ respondent No. 1 herein contested by filing written statement but the trial court vide its judgment and decree dated 24.04.2008 dismissed the said suit, against which first appeal being No. 202/2008 was preferred before this High court. The division Bench of this High court however set aside the aforesaid judgment and decree passed by the trial court and decreed the suit filed by the plaintiffs with the observation that the suit is maintainable and is not barred and civil court has got jurisdiction to try the civil suit on merit and that the competent authority did not follow the mandatory procedure laid down under the act and as such the proceeding are not binding on the plaintiff. It was further observed that the respondent No. 1 herein/hospital was in unauthorized possession of the property in question and was directed to deliver vacant possession of the suit property. Being aggrieved by the said order passed by the Division Bench, the state of west Bengal i.e. competent authority and the hospital/respondent No. 1 preferred Special Leave Application before the Apex Court being civil appeal No. 10629-10631 /2014.

6. In the said special leave to appeal the impugned judgment of the division bench was set aside by the Apex Court and the judgment of the trial court was restored with the clear observation that the civil court has no jurisdiction to entertain a civil suit with respect to proceedings under the aforesaid urban Land Ceiling Act of 1976, being a special and self-contained enactment. However, in paragraph 63 of the said judgment, Apex Court was of the view that if there were any remedy available to respondents in relation to the suit property then any such remedy was under the Act but not by filing a civil suit in a civil court

and start a fresh round of litigation with respect to the suit property, as such suit is impliedly barred in the light of exclusion of jurisdiction of the civil court under the Act.

7. In view of the of aforesaid observation of the Apex Court which was passed on 26.02.2019, the aggrieved petitioners filed an application under section 33 of the said Act, 1976 challenging the aforesaid notification dated 12.02.1990, along with application under section 5 read with section 14 of the limitation Act.

8. The aforesaid Appellate Authority by the impugned order dated 26.11.2021 observed that in terms of paragraph 9 of the application, the aforesaid notification dated 12.02.1990 came to the knowledge of the applicant in March 1992 and appeal under section 33 of the Act of 1996, can be filed, by an aggrieved person within 30 days of the date on which the order is communicated to him but here the delay is for about 20 years from the date on which the applicants came to know about the notification and as such the aforesaid appeal dated 27.08.2021 is held to be not maintainable as it is well beyond the stipulated period of 30 days as envisages under section 33 (1) of the said Act of 1976.

9. In the present context the only point for consideration before this court is whether the said Appellate Authority was justified in not admitting the appeal with the observation that the appeal is hopelessly barred by the limitation as the appellants had the knowledge of said notification in the year 1992 but they did not take any action since 1992.

10. The petitioners herein preferred the present application mainly on the ground that it is not correct to say that there is a delay of 20 years in preferring the appeal but there is only a delay of 194 days in preferring the said appeal. Petitioner contented that after passing the aforesaid order by the Apex Court dated 26.02.2019 the petitioner made contact with several advocates and sought for legal opinion and in the meantime the lock down started in the month of March 2020 and thereafter the petitioners made contact with their advocate who instructed them to prefer the appeal. Accordingly the delay was caused firstly due to choosing wrong forum and for which they are entitled to get protection under section 14 of the Limitation Act and secondly after passing judgment of the Apex Court with the observation that the petitioners have their remedy within the Act of 1976, they could not prefer said appeal in time due to Covid-19 pandemic. Accordingly petitioner contended that the Appellate authority should have condoned the delay of 194 days in preferring the appeal as the petitioners have good chance to succeed and he ought not to have dismissed petitioners appeal on the ground of limitation.

11. In this context it is to be mentioned that while disposing the aforesaid civil appeal no. 10629- 10639/2014 the apex Court observed in paragraph 59 as follows:-

"59. In our view, if Respondent Nos. 1 to 7 plaintiffs claimed themselves to be

the lawful owners and holders of the suit property to the exclusion of others, there were three remedies available in law which they could have availed of:

(i) First, a remedy accrued in favour of Respondent Nos. 1 to 7 if not earlier when M/S OBL claimed to have purchased the suit property from the alleged vendors on 30.11.1962. It was at that point of time, a cloud was cast on their alleged title in relation to the suit property. Since registration of the sale deed amounts to a public notice, the Respondents should have filed a Civil Suit against the vendors of M/S OBL, and M/S OBL, for a declaration of their ownership and cancellation of their sale deed in relation to the suit property. It was not availed of.

(ii) The second remedy arose under Section 6 of the Act, for filing a statement as owners and holders of the suit property before the Competent Authority, after the Act came into force in 1976. This was also not availed of by the plaintiffs.

(iii) The third remedy was in filing objections under Section 10(1) of the Act before the competent Authority when the competent Authority invited objections on 12.02.1990 from public and pursuant to it, the notice was issued in that behalf. The respondents again did not avail of this remedy, and failed to file any objections."

12. In the said judgment the apex court was further pleased to observe in Paragraph 61 as follows:-

"61. In our considered opinion, the dismissal of the SLP by this Court vide Order 28.07.1997 had a three-fold effect on the rights of the parties to the Lis in relation to the suit property:

First, the entire action taken by the competent authority initiated from Section 6 of the Act till issuance of notifications under Section 10 (1) and (3) of the Act issued on 12.02.1990 and 11.05.1990 in relation to the suit property were held to be in conformity with the provisions of the Act. This satisfied the last condition of clauses (1) of Dhula Bai (supra) also.

Second, the suit property stood vested in the State free from all encumbrances under Section 10 (3) of the Act.

Third, the State Government was held to be in legal possession of the suit property as the owner on and after 11.05.1990, to the exclusion of all, by following the due procedure of law."

13. In the said judgment though it was observed by the apex court that if there was any remedy available to the respondents in relation to the suit property then any such remedy was under the act, but not by filing a civil suit in a civil court and start a fresh round of litigation with respect to the suit property but nowhere it has been expressed by the Apex Court that the limitation period will not hit to such remedy. On the contrary in Paragraph 75 of the said judgment of Apex Court is of clear view.

"75. Furthermore, the Respondent Nos. 1 to 7/ plaintiffs having failed to raise objections to the ceiling proceedings at any stage, the suit property stood vested in the State, free from all encumbrances. The belated challenge to the same is meritless. Having failed to avail of the remedies under the Urban Land Ceiling Act and the one resorted to resulted in rejection of the claim made therein upto this Court, Respondent Nos. 1 to 7/Plaintiffs sought to start a fresh round of litigation by filing a Civil Suit, which was barred under the Act. Furthermore, the State after acquiring ownership over the suit land has allotted the suit land to the M/S Apollo Gleneagles Hospitals on a 30 years lease. Hence, the situation, in our view, has now become irreversible."(emphasis added)

14. In view of aforesaid clear finding of the Apex court that the petitioners failed to raise objection to the ceiling proceeding at any stage and the suit property stood vested to the State free from all encumbrances and having failed to avail of the remedies under the urban land ceiling land which resorted to result in rejection of the claim made therein and as according to the Apex Court the situation has become irreversible in view of the fact that the state after acquiring ownership over the suit land has allotted the suit land to the hospital on a 30 years lease, I find nothing to interfere with the observation made by the Appellate authority, that the said appeal is not maintainable as barred by limitation and there is hardly any merit also in the appeal which has been filed at a belated stage without explaining proper cause of delay.

15. C.O. 2327 of 2021 is accordingly dismissed. However there will be no order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.