

(1985) 06 CAL CK 0023
In the Calcutta High Court
Case No : A.F.O.O. Tender No. 1498 of 1985

Kumuda Sundari Properties (Private) Ltd. and Others	APPELLANT
Vs	
Namdang Tea Co. Ltd.	RESPONDENT

Date of Decision : 25-06-1985

Acts Referred:

Citation : AIR 1986 Cal 266 : 89 CWN 1147

Hon'ble Judges : Shamsuddin Ahmed, J;Chittatosh Mookerjee, J

Bench : Division Bench

Advocate : Saktinath Mukherjee, M.A. Vidyadharan, for the Appellant; Dipankar Gupta, Sudipto Sarkar, S. Pal, S. Datta, Sefali Sircar, A.P. Sircar and Barian Banerjee, for the Respondent

Judgement

Mookerjee, J.—M/s. Namdang Tea Co. Ltd. (the respondent No. 1 herein) claims to be a monthly tenant under Smt. Juthika Chowdhury, the appellant No. 2, in respect of the ground floor flat at premises No. 11/1, Sunny Park, P. Section Ballygunj, Calcutta. On May 2. 1985 the said company moved before Hon'ble Mr. Justice Bhagabati Prasad Banerjee a writ application, inter alia, praying that the purported plan sanctioned by the Calcutta Municipal Corporation Authorities in regard to the construction of a building at Premises No. 11/1, Sunny Park be cancelled and/or quashed and also for commanding the Calcutta Municipal Corporation Authorities to withdraw or recall or rescind the said plan. Bhagabati Prasad Banerjee, J. directed the petitioner to serve the copies of the writ petition on the respondents and in the meantime granted an ex parte interim order in terms of prayer (e) of the writ petition recording that he was passing the said ex parte interim order after taking into consideration the judgment passed by Suhas Chandra Sen, J. in C.R. No. 15147(W) of 1981 dated April 23. 1982.

2. Being aggrieved by the said ex parte interim order of injunction, inter alia, restraining them from making any construction in Premises No. 11/1, Sunny Park, the appellants preferred the present appeal. Having heard the learned advocates for the parties including the Calcutta Municipal Corporation, we are of

the view that the ex parte ad interim order granted by the learned single Judge ought to be vacated subject to the observations and directions mentioned hereinafter.

3. The respondent No. 1, Namdang Tea Co. Ltd., itself claims to be a monthly tenant of the ground floor flat and it is a disputed question of fact between the appellants and the said tenant as to whether the lawn measuring a little over 11 cottahs was included in the tenancy claimed by the respondent No. 1 or whether the respondent No. 1 has any other kind of right over the lawn. The said dispute obviously cannot be adjudicated in a writ proceeding. Secondly, even before filing the writ petition, the respondent No. 1, Namdang Tea Co. Ltd., has instituted a civil suit against the appellants, inter alia, for declaration and injunction. The learned Munsif refused its prayer for ad interim injunction. We understand that the Miscellaneous Appeal preferred by the plaintiff in the said suit has been since dismissed by the Lower Appellate Court. The learned advocate for the respondent No. 1 stated before us that his client proposed to file a revisional application in this Court against the said dismissal of its miscellaneous appeal. The respondent No. 1 having failed to obtain from civil Court any order of temporary injunction to restrain the present appellants from making any construction upon the disputed lawn at Premises No. 11/1, Sunny Park has now filed the writ petition out of which it would not be a sound exercise of discretion to grant in favour of the respondent No. 1 ex parte ad interim injunction.

4. We may record that one H. C. Chawla who claimed to be a tenant under the defendant in respect of appellant No. 2 in respect of the first floor flat at 11/1, Sunny Park had allegedly put up obstruction in the way of the appellants making any construction in the lawn in question. The appellants instituted a civil suit against the said first floor tenant. The learned Munsif having declined to make any ad interim order of injunction against the said tenant, the appellants preferred a miscellaneous appeal in the lower appellate Court. The learned District Judge granted an interim order of injunction in appellants' favour. The said first floor tenant preferred an appeal in this Court. The said appeal has been since dismissed and the order of the learned District Judge granting interim injunction in appellant's favour has been already upheld.

5. Prima facie, before granting of permission under Rule 55 of Schedule XVI of the Calcutta Municipal Corporation Act, 1980, (1951) the respondent No. 1, who was a monthly tenant under the appellant No. 2, was not entitled to receive any notice of hearing. Schedule XVI does not contain any provision for giving such notice or opportunity of hearing to the monthly tenant of the premises, in case the owner or the landlord of the said premises applies for sanction of a plan for building, rebuilding and/or additions or alterations. Mr. Saktinath Mukherjee, learned advocate appearing on behalf of the appellants in this connection has strongly relied upon the decision of B. C. Mitra and Janah. JJ. in the case of Sm. Pratima Sarkar v. Corporation of Calcutta AIR 1973 Cal 484. The Division Bench in para 9 of their judgment held that there was no provision in Schedule XVI of

the Calcutta Municipal Act, 1951 requiring the Corporation to issue notice or to give hearing to the owner of an adjoining building before granting sanction to a plan for proposed construction. We respectfully agree with the said view and for the identical reasons hold that the sanction obtained by the appellants cannot prima facie, be challenged only on the ground that the Calcutta Municipal Corporation Authorities did not give any notice to the respondent No. 1, who was a monthly tenant.

6. Every applicant who intends to erect a building according to Rule 49 of Schedule XVI shall satisfy the Commissioner as to his exclusive right of erection. The said Rule also requires the application, plan, elevations etc. referred to in Rules 47 and 48 of the said Schedule to be signed by the applicant and his licensed Architect. The respondent No. 1 who is a monthly tenant of the ground floor flat does not claim any right to erect structures in any portion of Premises No. 11/I, Sunny Park. The appellant No. 1 has entered into an arrangement with the appellant No. 2 who is the owner of the said holding for making construction of building in the said holding. So long as the respondent No. 1 remains a monthly tenant, it is undoubtedly entitled to right of enjoyment of the ground floor flat let out to it. Merely by obtaining any sanction from the Calcutta Municipal Corporation, the appellants cannot interfere with the said right of enjoyment of its tenancy by the respondent No. 1. The appellants cannot forcibly dispossess the respondent No. 1. The landlord only by establishing any one or more of the grounds set out in Section 13(1) of the West Bengal Premises Tenancy Act may recover possession from the respondent No. 1. In case, the appellant No. 2 seeks to recover possession in Civil Court on the ground of building and rebuilding, she must fulfil the requirements of Clause (f) of Section 13(1) of the said Act. Any decree passed u/s 13(1)(f) of the Act would be subject to the provisions of Section 18A(i) of the said Act. A landlord must complete the construction works within the time given by Court. Secondly, after the constructions are completed, a tenant who has been ejected u/s 13(1)(f) of the West Bengal Premises Tenancy Act is entitled to apply before the Rent Controller for restoration of possession. These mutual rights and obligations between the landlord and the tenant cannot be obviously enforced by the Calcutta Municipal Corporation Authorities. Even if as a part of the condition for granting sanction a landlord is required by the Municipal Authorities to make an affidavit undertaking not to disturb the possession of his tenant, same cannot affect the rights and obligations, of the landlord and the tenant under the Rent Control Legislation which has been given overriding effect.

7. When any person files a civil suit for perpetual or mandatory injunction challenging the validity of a sanction of a building plan obtained by the owner of a holding on the ground of breach of Municipal Rules, he must also establish that the proposed construction on the defendant's land would result in infringement of the plaintiffs property or personal rights. It is settled law that there is no obligation under the ordinary law on the part of a defendant towards the plaintiff which requires the former to make construction on his own land strictly in

accordance with the Municipal Rules and Regulations (vide *Nandalal Ladia and Another Vs. Provudayal Tikriwalla and Another*, , *Ila Pal Chowdhury v. K. C. Dutt* ILR (1958) Cal 143 *Lalit Mohan Mitra and Others Vs. Samirendra Kumar Ghosh and Others*,). We have already mentioned that the respondent No. 1, *Namdang Tea Co. Ltd.*, has instituted a civil suit against the appellants. The Calcutta Municipal Corporation is, however, nor a party in the said suit. We have also mentioned that the respondent No. 1 has not yet been able to obtain from civil Court any order of temporary injunction restraining the present appellants from making construction upon the lawn or vacant land at premises No. 11/1. Sunny Park.

8. The locus standi of the petitioner in a writ application to challenge the validity of a municipal sanction obtained by another person may not be decided only by referring to the provisions of Specific Relief Act. But such a petitioner must also establish that the sanction granted by the Municipal Authorities in favour of another infringes some legal right claimed by him. We respectfully agree with the observations of P, N. Mookerjee and Renupada Mukherjee, JJ. in the case of *Ila Pal Chowdhury v. K. C. Dutta* (ILR (1958) Cal 143) (supra), regarding the import of the decisions of this Court in *Re : Lukshmi Mont Dassi* 45 CWN 401 : AIR 1941 Cal 3911 *Arayilagath Chandroth Mohamed and Another Vs. Corporation of Calcutta and Others* and *Hirendra Nath Datta Vs. Corporation of Calcutta and Others*, . In all the three cases arising u/s 45 of the Specific Relief Act, 1877 there were clear findings that the breaches of the Municipal Rules complained of were prejudicial to the sanitation or ventilation of the neighbouring building and the relief or remedy under consideration, (sic) only the issue of mandamus. The Supreme Court in the case of *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, , also upheld the locus standi of the petitioner of the said case to challenge the legality of the construction of a cinema building in a residential area on the ground that such illegal and unauthorised construction of a cinema building was likely to affect the right to or enjoyment of the property by persons residing in the said residential area. Thus, when a monthly tenant files a writ petition challenging the validity of a building plan obtained by his landlord, he must establish that the said sanction interferes with his right to enjoy tenancy granted to him. The aforesaid reported cases also decided the question of locus standi of a person aggrieved to file a writ petition not at the stage prior to the granting of sanction to a building plan but at the post-sanction stage. These decisions do not lay down that before granting sanction of a building plan a person who does not claim that he is entitled to erect upon the holding itself ought to be given opportunity of hearing.

9. Mr. Dipankar Gupta, learned advocate appearing on behalf of the respondent No. 1, *Namdang Tea Co. Ltd.*, in support of his submission urged that his client was entitled to get an opportunity of hearing before the Municipal Authorities, has relied upon the unreported decision of *Suhas Chandra Sen, J.* dated 23rd April, 1982 in the case of *Durganarayan Kapoor v. Corporation of Calcutta*. No doubt, there are certain superficial similarities in facts of the said case before

Suhas Chandra Sen, J. and the present case before us. In the case of *Durganarayan Kapoor v, Corporation of Calcutta* (supra), the tenant who was the petitioner in the writ case had filed objections against a building plan resubmitted by his landlord. The Corporation of Calcutta had sent notices to the said objector under certificate of posting. Suhas Chandra Sen, J. upon consideration of the facts held that service of the said notice under Certificate of Posting was not proved. The learned Judge had, however, declined to quash the sanction already granted in favour of the landlord. On the special facts and circumstances of the case and in the interest of justice, Suhas Chandra Sen, J. had directed the Commissioner of Calcutta Corporation to give the tenant an opportunity of being heard in support of his case. In case the Commissioner was satisfied, the landlord who was respondent No. 7 did not have exclusive right to erect a building on the land in dispute, the Commissioner might exercise his powers under Rule 62B Schedule XVI of the Calcutta Municipal Act and cancel the permission to erect according to the plan. We are unable to consider the said decision of Suhas Chandra Sen, J. as an authority for the proposition that in every proceeding under Rule 62B Schedule XVI or corresponding Section 397 of the Calcutta Municipal Corporation Act, 1980, tenant or tenants who do not even claim any right to erect upon the holding in question . ought to be given opportunity of hearing. The Municipal Authorities under Rule 62B or Section 397 of the Calcutta Municipal Corporation Act have only a limited power to cancel sanction. The expressions "material mis-representation" and "fraudulent statement" must relate to the particulars and information required to be furnished by the different Rules contained in Schedule XVI or Sections 393, 394 and 395 of the Calcutta Municipal Corporation Act, 1980. The Municipal Authorities under the aforesaid provisions may act suo motu or on the basis of complaints received about the alleged material mis-representation or fraudulent statement on the part of a person who has obtained sanction of a building plan. It is for the Municipal Authorities to decide whether an enquiry under R. 62B or Section 397 of the Act, as the case might be, ought to be held. The said provisions also require opportunity of hearing to the person against whom such a proceeding is initiated.

10. During the pendency of the appeal, the respondent No. 1, Namdang Tea Co. Ltd., was allowed to have inspection of the Corporation records relating to the sanctioned plan in respect of the Premises No. 11/1 Sunny Park. On the basis of the said inspection, it has been urged" on behalf of the respondent No. 1 that there was an alleged discrepancy between the site plan submitted by the appellant No. 1 and the actual measurement of the frontage of the holding in question. Some other alleged irregularities in the plan have been alleged on behalf of the respondent No. 1. These points have not yet been taken in the writ petition and the said alleged facts were not taken into consideration by the learned single Judge at the time of granting order of ad interim injunction. It is not for us to decide whether or not the sanction obtained by the appellants by making any material mis-representation or fraudulent statement. We have

already referred to the provisions of Section 397 of the Calcutta Municipal Corporation Act, 1980. Although we propose to vacate the interim orders obtained by the respondent No. 1, it would be open to the Municipal Authorities to proceed in accordance with law in case the appellants have obtained sanction upon material misrepresentation or fraudulent statement.

11. Mr. Dipankar Gupta has drawn our attention to the following endorsements on the reverse of the sanctioned plan :

"1) Before starting any construction the site must conform with the plans sanctioned and all the conditions as proposed in the plan should be fulfilled. The validity of the written permission to execute the work is subject to the above conditions.

2) Sanction subject to demolition of existing structures to provide open spaces as per plan before construction is started.

3) Reg. undertaking to provide tenants with accommodation."

These endorsements indicated that the sanction in favour of the appellant No. 1 has been given conditionally in terms of Rule 55(a) of Schedule XVI. Mr. Gupta has not disputed the power of the Municipal Authorities to grant such conditional sanction. Such sanction itself cannot be held to be invalid. While deciding the validity of the sanctioned plan obtained by the appellant, we do not propose to enter into the said question whether the appellants are bound to demolish all the existing structures in order to provide requisite open space before starting construction in any portion of Premises No. 11/1, Sunny Park or whether the proposed construction could be made part by part. It is for the Corporation Authorities at the first instance to consider whether starting of the construction work in the vacant portion without demolishing all the existing structures shown in the sanctioned ? plan would be lawful or not. The Municipal Authorities ought to consider the said questions and decide whether the proposed construction works without fulfilling all the conditions of the sanctioned plan would be lawful. We, however, make it clear that in any future proceeding if commenced against the appellants, the present respondent No. 1, Namdang Tea Co. Ltd., need not be given notice of hearing.

12. For the foregoing reasons, we allow this appeal, set aside the order of ad interim injunction granted by the learned single Judge. We direct that within three months the Calcutta Municipal Corporation Authorities would decide in accordance with law whether the sanction of the building plan was obtained by the appellants by any material misrepresentation or fraudulent statement. The Municipal Authorities will be at liberty to consider whether the commencement of the construction work at Premises No. 11/1, Sunny Park has been made in accordance with the sanctioned plan. We ourselves, however, express no opinion upon the said questions.

13. On the prayer of the learned Advocate for the respondent No. 1, we grant

stay of operation of our order for a period of two weeks from date.

Shamsuddin Ahmed, I.

I agree.