

(2008) 07 CAL CK 0054
In the Calcutta High Court
Case No : Writ Petition No. 1394 of 2007

Marshall Trexim (P) Ltd. and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 22-07-2008

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 6(1)

Water (Prevention and Control of Pollution) Act, 1974 — Section 25, 26, 27, 28

Citation : (2008) 4 CHN 815

Hon'ble Judges : S.S. Nijjar, C.J.; Pinaki Chandra Ghose, J

Bench : Division Bench

Advocate : S. Pal and A.N. Mukherjee, for the Appellant; Supriya Bose, for the Respondent

Final Decision : Allowed

Judgement

Pinaki Chandra Ghose, J.—This appeal is directed against a judgment dated 24th July, 2007 and an order dated 13th November, 2007 passed by the Pollution Control Appellate Authority (W.B.).

The grievance of the writ petitioner that the learned Appellate Authority committed an error of law by not appreciating the appeal filed by respondent No. 10 is not maintainable u/s 28 of the Water (Prevention and Control of Pollution) Act, 1974 [hereinafter referred to as the "said Act"].

2. The facts of the case briefly are as follows:

(a) One Mr. Ramlal Mullick purchased a premises No. 10 at Prince Anwar Shah Road, Kolkata on 6th September, 1927 in a Court shell. The said property in question now re-numbered as 22 and 24, Prince Anwar Shah Road and 2A, Prince Baktiar Shah Road, Kolkata respectively.

(b) A Will was executed by the said Ramlal Mullick appointing Maharaja Manindra Chandra Nandy (since deceased) as executor and Smt. Annapurna Roy, the daughter of Ramlal Mullick as executrix of the said Will. On the death of Ramlal,

Annapurna Roy applied for probate before this Court which was granted in her favour on 3rd December, 1931.

3. It appears from the records of Kolkata Municipal Corporation [hereinafter referred to as the "said Corporation"] that it would be evident that there was no tank in the premises No. 2A, Prince Baktiar Shah Road, Kolkata, since 1971. On 17th February, 1976 the Urban Land (Ceiling and Regulation) Act, 1976 [hereinafter referred to as "the ULCR Act"] came into force and on 1st February, 1977, Smt. Annapurna Roy, the executrix under the Will of Ramlal Mullick filed the statement u/s 6(1) of the said ULCR Act.

4. It further appears that the said Annapurna Roy in the said statement, in order to save the land measuring about 1289.72 sq. meters, declared as tank and prayed for exemption before this Court. The said competent authority by an order dated 15th April, 2004 held that there is no excess vacant land in the said property.

5. It further appears that Smt. Annapurna Roy filed a suit for eviction against IMI of which Chand Kajaria is one of the partner or proprietor. On 15th January, 1992, Smt. Annapurna Roy died leaving her six sons. Since, no application for substitution was filed, the eviction suit against Chand Kajaria was abated.

6. Thereafter, the Roy family sold the property in question to the petitioners on 23rd October, 2002 and on 5th June, 2004, one Gora Sengupta made an application before the Pollution Control Board [hereinafter referred to as the "said Board"] alleging that an alleged pond in premises No. 2A, Prince Baktiar Shah Road, Kolkata was being filled up. Thereafter, on 28th July, 2004, the said Board found that there was no filling up of any tank. Again, on a further complaint made by the said Chand Kajaria on 5th July, 2005, the Revenue Officer of Urban Land Ceiling Department again held an enquiry and came to the conclusion that though in the record there may be tank, but the same has been filled up long ago.

7. Thereafter, on 22nd July, 2005, the Fisheries Department alleged that the tank of the said property has been filled up and accordingly directed the owners to restore the tank. On 16th July, 2005, the Kolkata Municipal Corporation asked the petitioners to stop the construction in the said property after receiving a Memo dated 22nd July, 2005 from the Fisheries Department.

8. The petitioners made representations before the said Municipal Corporation Authorities and on 4th October, 2005, after being satisfied, the said authorities revoked the said stop work notice and thereafter the said Board on 19th May, 2006 held that there was no filling up of the alleged tank and the DG (PMU) of Kolkata Municipal Corporation issued a letter fixing a hearing in respect of such filling up of pond in the presence of the Fisheries Department, Pollution Control Board, the Kolkata Municipal Corporation Authorities and the complainant.

9. On 30th June, 2007, the DG (PMU) again informed the petitioner that he will

hold joint inspection in the said premises in question. On 11th July, 2007, the DG (PMU) made joint inspection of the said property with Fisheries Department and Kolkata Municipal Corporation Authorities wherefrom it appears that Chand Kajaria preferred an appeal against the order dated 19th May, 2006 before the Pollution Control Board Appellate Authority on 27th February, 2007.

10. On 24th July, 2007, the Appellate Authority held that there was a tank at least upto the year 1977 and the same has been filled up after 1977. Hence, it is hit by the said Act of 1974. The Appellate Authority further directed that no construction should be made on the said property and construction if made, that should be demolished and the same will be used for plantation and greeneries. Accordingly, the writ petitioner filed a review application of the said order dated 13th November, 2007 which was also rejected by the said Appellate Authority.

11. Mr. S. Pal, learned Senior Advocate appearing on behalf of the appellant drew our attention to the order dated 19th May, 2006 passed by the said Board and hence, the Presiding Officer held as follows:

I do not find the existence of any circumstances whatsoever demanding an interference by the State Board in the matter as urged on behalf of the complainant. The arguments advanced in this regard by the Id. Advocate for the complainant are not germane (relevant) to the facts and circumstances of this case.

12. After examining the records filed u/s 6(1) of the ULCR Act, the competent authority did not observe any tank/pond in the said premises No. 2A, Prince Baktiar Shah Road, Kolkata and it further appears that the Pollution Control Board held as follows:

From Annexure "G" it transpires that it is an enquiry report made by the Revenue Officer and the said report was submitted after spot verification and it was found that there is no existence of any tank in the premises and the place was covered with bushes and trees. So, by no stretch of imagination it can be said that the land in question has been recently filled up. The Urban Land Ceiling Authority after making thorough enquiry into the matter, found that there was no existence of any tank at least since 1971. As such filling up of the tank/pond by M/s. Merlin Developers at the site is rather immaterial and irrelevant.

13. Mr. Pal further pointed out that no appeal will lie before the Appellate Authority from the order of the said Board save and except under Sections 25, 26 and 27 of the said Act as has been specifically stated in the statute. He further pointed out that the order passed by the Pollution Control Board has specifically held that on the basis of the evidence produced before it, the question of filling up of the tank at the said premises in question did not and could not arise and all the authorities including the Kolkata Municipal Authority found that after making enquiry into the matter, they were satisfied that there was no tank in the said property or the tank has been filled up at the said premises. Hence, according to him, in the facts and circumstances of this case,

there is no foundation or basis of the said fact.

14. Mr. Pal further pointed out that it is evident from the Memo issued by the Fisheries Department dated 22nd July, 2005, the officers of the said Department also did not find any tank during their so-called inspection and the Appellate Authority without relying on the basis of evidence came to the conclusion that there was an existence of tank although in the order itself, the said authority has specifically held as follows:

...it is an admitted fact that presently no such tank exists at the locale. It can very well be visualised that the tank has definitely been filled up and it could not have evaporated otherwise. The question is when was it filled up and whether such filling up is illegal, it is the contention on behalf of the respondent developers that they did not fill up the tank and the tank if at all existed, was filled up long years back....

15. It further appears from the records of the Municipal Authority that even from the Assessment Book for the year 1970-71, it did not disclose the existence of any tank and even then, Mr. Pal submitted that the opinion of the Appellate Authority is nothing but a conjecture and only on the basis of surmise, the said Appellate Authority held as follows:

Therefore, in our opinion, this record in the Assessment Book for the year 1970-71 about the existence or non-existence of the tank and other specific structures does not necessarily clinch the issue as this is only omission of details. However, it is also to be mentioned here that the respondent produced some copies of CMC records relating to comparatively recent period of 2000 where although some structures have been mentioned yet no tank has been mentioned there. Even if we take the same at its face value and find that there was no existence of tank in 2000, and although it may indicate that the tank was not filled up in 2004-05 as alleged by the appellant complainant, yet that does not necessarily settle the matter.

16. Therefore, Mr. Pal submitted that the said Appellate Authority did not even accept the records of the authorities and pointed out that even without any positive evidence on records the said Appellate Authority held that there was a tank at premises No. 2A, Prince Baktiar Shah Road Kolkata measuring 1289.72 sq. meters and the Said tank was filled up after 1977 although there was no evidence on record to prove the said fact. Hence, according to him, the Appellate Authority came to such conclusion on the basis of surmise and without any evidence.

17. He further pointed out that the said Appellate Authority has no jurisdiction under the provisions of the said Act of 1974 to decide the matter in question and in view of the fact the said authority could only entertain an appeal which the said authority is authorised to do so and under the said Act, the said authority has no jurisdiction over the matters as a Public Interest Litigation, since the public interest litigation was not entertainable by the Appellate Authority.

18. Therefore, according to him, save and except the jurisdiction granted under the statute in favour of the Appellate Authority, the said authority cannot decide the question at all. Therefore, the order which has been passed by the authority is without jurisdiction and therefore, it is a nullity.

19. Hence, Mr. Pal submitted that the said appeal should have been dismissed, since the order was passed, the writ petitioner filed a review application before the said Appellate Authority which was dismissed on 13th November, 2007. The Appellate Authority inspite of pointing it out that the authority has no jurisdiction to decide the question and the appeal was filed by the complainant was not maintainable even then the said Authority dismissed the said review application and it is also to be noted that the said complainant Chand Kajaria subsequently withdrew the said complaint and on the basis of such, the said Authority imposed a cost on the said complainant.

20. After perusing the materials on record and the sections placed before us and after hearing Mr. Kallol Bose, learned Advocate appearing on behalf of the Pollution Control Board and Mr. Supriyo Bose, learned Advocate appearing in support of the respondents, we find that under the statute the said Appellate Authority had no jurisdiction to entertain any appeal save and except the appeal as mentioned in Sections 25, 26 and 27 of the said Act. Accordingly, we hold that the Appellate Authority has no jurisdiction to entertain the said appeal. The order on that ground alone should be set aside.

21. Furthermore, it appears to us that the Appellate Authority did not consider the records properly and did not appraise the said records to hold that the tank was filled up after 1977. The said opinion of the authority cannot be accepted by us on the materials on record placed before us.

22. Furthermore, Mr. Kallol Bose submitted before us that it is a fact that if there is any tank has been filled up, then automatically the authority has power to take steps in the matter in question and according to him, in the instant case, it is true that the Pollution Control Board passed an order in favour of the writ petitioner. He also cannot join issue in respect of the fact that the remedy of appeal u/s 28 of the said Act is limited to only Sections 25, 26 and 27 of the, said Act.

23. Accordingly, we come to the conclusion that the appeal which was filed by the complainant u/s 28 of the said Act, the Appellate Authority had no jurisdiction to decide the matter under the said statute and in our opinion, the appeal is not maintainable on the ground as stated by Mr. Pal.

23. Hence, we hold that the Appellate Authority had no jurisdiction to entertain the appeal and the order so passed by the Appellate Authority is, therefore, set aside. For the reasons stated hereinabove, the writ petition is allowed.

S. S. Nijjar, C.J.

24. I agree.