

(2016) 05 CAL CK 0018
In the Calcutta High Court
Case No : WP 10728 (W) of 2015.

**M/s. Green Hut Private Limited - Petitioner @HASH State of West Bengal
and Others**

Date of Decision : 02-05-2016

Acts Referred:

Citation : (2016) 3 CalLJ 426 : (2016) 6 WBLR 671

Hon'ble Judges : Samapti Chatterjee, J.

Bench : Single Bench

Advocate : Mr. Sakti Nath Mukherjee, Mr. Aniruddha Chatterjee and Mr. Kushal Chatterjee, Learned Advocates, for the Petitioner; Mr. N.C. Bihani and Mr. Billwadal Bhattacharjee, Learned Advocates, for the Bidhannagar Municipal Corporation; Mr. Lakshmi K. Gupta, Learn

Final Decision : Disposed Off

Judgement

Samapti Chatterjee, J. - Issue to be determined : Whether considering the subsequent development Court can extent the contractual period agreed between the parties in a writ proceedings :

2. The case in brief is as follows :-

On 27th November, 1998 the Plot No.167, Block-IB, Sector-III, Salt Lake, Kolkata-700106 was leased out in favour of the petitioner but possession was handed over to the petitioner on 23rd June, 1999. In the said Lease Deed the petitioner was permitted to construct 20th storied hotel over the said plot of land. Certainly on 10th September, 2009 the respondent no.2 issued a letter alleging violation of Clause II (8) of the Lease Deed by the petitioner.

Challenging the same the petitioner moved a writ petition before this Hon'ble Court being W.P No.18790 (W) of 2009. Thereafter the order dated 10th September, 2009 issued by the respondent no.2 was set aside by this Hon'ble Court on 15th March, 2010. On 30th April, 2010 the respondent no.2 in relaxation of Clause II (6) (a) granted three years time to the petitioner for completion of the said hotel project work. The petitioner again on 16th August,

2010 filed an application before the respondent no.2 praying for grant of written permission for mortgage. Since no permission was granted by the respondent, therefore, without finding any alternative the petitioner moved before this Hon"ble Court and the Hon"ble Court on 18th February, 2011 at the time of disposing that writ petition being W.P No. 22 (W) of 2011 directed the respondent no. 2 and 3 to grant permission to the petitioner for creation of mortgage.

Thereafter pursuant to the order dated 18th February, 2011 on 18th April, 2011 the authority granted permission to the petitioner to mortgage the said property for granting loan for completion of the project work. Since the revalidation of the building plan was about to expire on 20th February, 2012 therefore the petitioner made a representation before the said authority to revalidate the said sanction plan for a further period of five years. Since the said sanction plan was not revalidated by the authority therefore again the petitioner was compelled to approach before this Hon"ble Court by filing writ petition being W.P No.11535 (W) of 2013 and the said writ petition was disposed of by this Hon"ble Court on 30th April, 2013 thereby directing the respondent authority to consider and disposed of the writ petition of the petitioner within eight weeks. Thereafter on 25th November, 2013 the respondent no.5 passed a reasoned order thereby extending the validity of the sanctioned building plan for a further period of three years. Immediately after revalidated the said sanction plan the petitioner on 3rd April, 2014 applied before the respondent no.3 for further relaxation of Clause II (6) (a) of the Lease Deed. Since that application was not disposed of by the respondent authority hence, the present writ petition.

3. Mr. Sakti Nath Mukherjee, learned Senior Counsel appearing for the petitioner submitted that it is an admitted fact that the respondent authorities are having ample power to extent the validity of the Lease Deed as well as the validity of the sanctioned building plan under the law. But the respondent authorities this time failed to relax the Clause II (6) (a) of the lease period.

4. Mr. Mukherjee further vehemently contended that there is as such no laches or negligence on the part of the petitioner but petitioner is a victim of the circumstances and has been compelled to suffer due to the laches on the part of the respondent authorities.

5. Mr. Mukherjee also contended that the validity of both the Lease Deed and the sanctioned building plan should be extended for a further period of preferably five years so as to enable the petitioner to smoothly complete the said project work within that stipulated period of extension without being time to time harassed by the different wing of the government.

6. Mr. Mukherjee further strongly argued that due to the negligence on the part of the respondent authority the petitioner"s project work has been stalled and on the top of that on every occasion petitioner had to approach before this Court for redressal.

7. Mr. Mukherjee further contended that the non-action and/or in-action on the part of the respondent authorities to relax the Clause II (6) (a) of the Lease Deed is very much unfair, unjust and unwarranted and also contrary to Article 300 A, 19 (1) (g) Article 21 of the Constitution of India and at the same time very much against the natural justice.

8. Mr. Mukherjee further argued that if the Clause II (6) (a) of the Lease Deed had been relaxed by the respondent authorities thereby extending the lease period for further five years then question of approaching before this Hon"ble Court does not arise and the project work could have completed by this time.

9. Mr. Mukherjee further vehemently urged that writ Court can entertain any agreement executed between the private party and the authority.

10. Mr. Mukherjee further vehemently contended that due to lack of funds the petitioner could not complete the project work within the stipulated period of time as per Clause II (6) (a) of the Lease Deed therefore at least five years extension of time of the Clause II (6) (a) of the Lease Deed is very much required for completion of the said project work. In support of his contention Mr. Mukherjee relied on Section 108 Means under the West Bengal Premises Tenancy Act. Some portion of that is quoted below :-

"108 Means-The yard-stick of means these days is not the cash one has, but the credit one can command in the market. On the question of proof of means to building and re-building, it has been held in Krishna v. Tejpal that the genuine desire to build and proof of means to build and rebuild is sufficient. It is not always necessary to produce cash to substantiate the means. What is necessary for the landlord to prove is that he has capacity to rebuild. So he has to prove his financial resources only."

Mr. Mukherjee also relied on a decision reported in AIR 1967 Cal 390 (Binani v. Gulamali), AIR 1991 SC 353 (Shamlal v. Ratanlal).

11. Mr. Mukherjee also strongly argued that writ petition could be filed against contractual obligations. In support of his contention Mr. Mukherjee relied on a Hon"ble Supreme Court decision reported in 2004 (2) SCC Page-130 (Teri Oat Estates (P) Ltd v. U.T. Chandigarh and Others) Paragraph 14.

Mr. Mukherjee also relied on another Hon"ble Supreme Court decision reported in 2005 (9) SCC Page 446 (Haryana Urban Development Authority v. Vijay Aggarwal) Paragraph-9 which is quoted below :-

"We are informed that in spite of there being no stay on payment of interest beyond 12% and in spite of clarification given by this Court's order (reported in Balbir Singh), the interest amount has still not been paid. We feel that for the lapse the appellants must pay interest at the rate of 15% from 17-3-2004 till payment. The appellants shall also pay costs fixed at Rs.500 to the Legal Aid Society of the Supreme Court. The appellants must recover the costs of Rs.500 personally from the officer (s), who was responsible for not paying even after

clarification by this Court."

Mr. Mukherjee also relied on a Hon"ble Supreme Court decision reported in 2009 (1) SCC Page-150 (Karnataka State Forest Industries Corporation v. Indian Rocks) Paragraph-38.

12. Mr. Mukherjee also drew Court attention to some paragraphs and photographs of the report filed in form of an affidavit. He established his contention that the project work is in progress but for further progress of the said hotel project work a huge amount of fund is required for which the petitioner needs financial assistance either from bank or from financial institutions. But unless the lease deed is extended at least for five years by the Government banks and other financial institutions are not in a position to provide financial assistance to the petitioner for the said project.

13. Before parting with his argument Mr. Mukherjee submitted that unless the relaxation period is extended at least for five years by relaxing the Clause II (6) (a) of the Lease Deed it is not possible for the petitioner to complete the project work within time as the bank and other financial institutions are not agreeable to grant any further loan unless the Lease Deed is extended at least for further five years.

14. Per Contra, Mr. L.K. Gupta, learned Additional Advocate General submitted that Court has no power to extent any terms of the contracts which is binding upon the parties. In support of his contention Mr. Gupta relied on a Hon"ble Supreme Court decision reported in AIR 1975 (SC) Page-1121 (Har Shankar and others etc etc. v. The Deputy Excise and Taxation Commissioner and others etc) Paragraphs-21 & 22 which are quoted below :-

"Para-21-On the preliminary objection it was finally urged by the appellants that the objection was misconceived because there was in fact, no contract between the parties and therefore they were not attempting to enforce any contractual rights or to wriggle out of contractual obligations. The short answer to this contention is that the bids given by the appellants constitute offers and upon their acceptance by the Government a binding agreement came into existence between the parties. The conditions of auction become the terms of the contract and it is on those terms tat licences are granted to the successful bidders in Form L. 14-A of the Rules. As stated in Cheshire and Fifflot's Law of Contract : (Eighth Edn, 1972; p.24)

"In order to determine whether in any give case, it is reasonable to infer the existence of an agreement, it has long been usual to employ the language of offer and acceptance. In other words, the court examines all the circumstances to see if the one party may be assumed to have made a firm "offer" and if the other may likewise be taken to have "accepted" that offer. These complementary ideas present a convenient method of analysing a situation, provided that they are not applied too literally and that facts are not sacrificed to phrases".

Para-22-In Civil Appeals Nos. 485 and 2205 of 1969 filed respectively by Northern India Caterers (P) Ltd and M/s Green Hotel, Bar and Restaurant and others the appellants hold licences in Form Nos. L-3, L-4 and L-5 for the retail vend of foreign liquor in a hotel, restaurant and in a bar attached to a restaurant. No auctions were held for granting these licences and therefore the reasoning that acceptance of bids brought into existence a concluded contract between the successful bidders and the Government will not apply to the cases of these appellants. But they also accepted the licences subject to the provisions of the Punjab Excise Act, 1914 and the Punjab Liquor Licence Rules, 1956. By Section 34 of the Act a licence under the Act has to be granted inter alia, on payment of such fees and subject to such restrictions and on such conditions as the Financial Commissioner may direct. Section 59 (d) of the Act confers power on the Financial Commissioner to make rules prescribing the scale of fees in respect of any licence. Rule 24 provides that the fees payable in respect of licences shall be either (a) fixed fees or (b) assessed fees or (c) auction fees. By amendments made on February 22, 1968 and March 30, 1968 the fixed fees were substantially enhanced and the appellants were called upon to pay those fees. Just as country liquor contractors offered bids voluntarily on terms and conditions governing the auctions, so in these two appeals the appellants voluntarily applied for and accepted the licences knowing fully well that the Financial Commissioner had the power to frame rules governing the licences. Whether the amendments made to the Rules after the appellants licences were renewed are applicable is another matter but the appellants cannot question the power of the Financial Commissioner to frame those rules. The licences, in a large measure, owe their existence and validity to the rule-making power of the Financial Commissioner. One of the reliefs which the appellants ask for is that Rules 27-A, 30 and 31 be declared ultra vires and unconstitutional and consequently the respondents be directed to refund the assessed fees already recovered. By attempting to exploit the licences without the burden of assessed fees originally attaching to them under the rules framed by the Financial Commissioner, the appellants are seeking to work the licences on such terms as they find convenient. The writ jurisdiction of High Court under Article 226 of the Constitution is not intended to facilitate avoidance of obligations voluntarily incurred. That, however will not estop the appellants from contending that the amended Rules are not applicable as their licences were renewed before the amendments were made."

15. Mr. Gupta also vehemently contended that contract executed between the parties only can be altered on the mutual agreement between the parties. Here, the State authority is not agreeable to relax the Clause II (6) (a) of the Lease Deed for the further period, therefore, Court cannot insist upon the respondent authorities to extent/relax the Clause II (6) (a) of the Lease Deed. In support of his contention Mr. Gupta relied on an Hon'ble Supreme Court decisions reported in AIR 1980 (SC) Page-2018 Paragraphs 13 & 15 (State of Haryana and others v. Jage Ram and others), 1996 (6) SCC Page-428 Paragraph-7 (United India Insurance Co. Ltd v. K.K.J Corporation) and also 2013 (5) SCC Page-470

Paragraphs-23 & 30 (Rajasthan State Industrial Development and Investment Corporation and Another v. Diamond & Gem Development Corporation Limited and Another).

16. Mr. Gupta learned Additional Advocate General also strongly submitted that during pendency of the writ petition pursuant to the Hon"ble Court order hearing was held and thereafter three years time was extended on 10th August, 2015 with some conditions. The extract of the decision dated 10th August, 2015 with the terms and conditions as laid down therein are quoted below:-

"However, in the interest of giving the petitioners a fair opportunity to prove their bona fides and considered that a period of seven months was lost due to mortgage issues by the Urban Development Department, I hereby direct that a period of twelve months be allowed as extended period for continuing with the project and if at the end of twelve months the petitioner is able to show considerable progress not below a proportionate progress of, say, 6-7 floors considering that the plan has been sanctioned for a 20-storied building and the original lease deed too mentions of a time period of 3 years for completion, as will be ascertained by a team of engineers to be deputed from this department on 9th August, 2016 or the next working day if 09.08.2016 happens to be a public holiday, only then will any further extension of time period will be considered. I wish to clarify that the onus of intimating the Urban Development Department at least two weeks ahead of 9th August, 2016 deadline will lie on the petitioners."

17. In conclusion Mr. Gupta contended that the impugned order dated 8th August, 2015 is a well reasoned, justified one which does not deserve any further interference by this Hon"ble Court. Therefore, this Court should direct the petitioner to carry out the project works as per the condition of the order dated 8th August, 2015.

18. Considering the submissions advanced by the learned Advocates and after perusing the records and the decision relied on by the learned Advocates, I find that during pendency of the final hearing of this writ petition the respondent authorities after considering the plight of the petitioner has extended five years period by relaxing Clause II (6)(a) of the Lease Deed with the condition that every one year, after petitioner has to show a considerable progress of the hotel project work not below a proportionate progress of 6-7 floors as the plan has been sanctioned for a 20-storied building and the original Lease Deed too schedule of a time period of three years for completion.

19. I also find from the report submitted before this Court in a form of affidavit by the petitioner that project work is in good progress. Therefore, unless the time period by the Lease Deed is not extended by the respondent authorities then the entire project work will be frustrated or stalled due to non-availability of sufficient fund as the banks and other financial institutions are not in a position to provide loan to the petitioner on the basis of such conditional extension of

lease deed.

20. I also find some substance in the argument of Mr. Mukherjee that since this 20 storied hotel project requires huge amount of fund which cannot be provided by the petitioner without financial assistance from banks or financial institutions therefore, petitioner has no option but to apply for a loan for that huge amount of fund, but unfortunately no bank or financial institutions are agreeable to grant loan to the petitioner with this conditional extension of the Lease Deed.

21. Court also cannot shut its eyes that there is dearth of employment in the State. Therefore, at this stage if the project work is stalled or frustrated due to lack of fund then ultimately the unemployed youth of this State will suffer who could have provided with employment after completion of hotel project and on the other hand the order dated 10th August, 2015 is very much contrary to the Articles 19 (I) (g) and 21 of the Constitution of India.

22. In my considered view this type of conditional relaxation of lease period deserves interference by this Hon'ble Court considering the factual matrix of this case that the petitioner failed to complete the said project within the stipulated period not due to wilful and deliberate intention but due to unavoidable circumstances beyond the control of the petitioner. Court also cannot ignore the facts that petitioner has been compelled to approach this court time and again by challenging one after another orders issued by different wings of the Government which got the project work delayed.

23. I also cannot overlook the very vital aspect, as projected by Mr. Mukherjee that the petitioner requires huge financial assistance from the banks or financial institutions but with such conditional extension of time vide order dated 10th August, 2015, no bank as well as financial institutions are agreeable to extant financial assistance. State is under obligation to make some effective, positive, workable and fruitful way out so that ultimately the petitioner can complete the hotel project work obtaining loan from the banks, or financial institutions.

24. That being the scenario in my considered view the order dated 10th August, 2015 cannot be sustained in the present facts and circumstances of the case in hand.

25. Accordingly the order dated 10th August, 2015 is hereby quashed and set aside.

26. Therefore, I direct the respondent authorities to re-visit the issue in the light of the observation as above and take a fresh decision after giving an opportunity of hearing to the petitioner for his authorised representative within three (3) weeks from the date of communication of this order and thereafter communicate the decision to the petitioner within one (1) week.

27. With these directions, this writ petition is disposed of without any order as to costs.

28. Needless to mention that this Court has decided in the writ petition only the issue relates to the extension of lease deed, issue in respect of extension of sanctioned plan has not been decided in the writ petition because that stage has not come as yet, since the validity of the sanctioned plan is still in force.

29. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties after fulfilling all the formalities.