

(2006) 11 CAL CK 0039

In the Calcutta High Court

Case No : A.P.O. No. 472 of 2002 and W.P. No. 1274 of 2001

Raj Kumar Mundra and Others

APPELLANT

Vs

Vettyattil Ravindran Alias V. Ravindran and Others

RESPONDENT

Date of Decision : 16-11-2006

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 411, 411(1), 411(4), 412, 48

Citation : (2007) 1 CHN 620 : 110 CWN 1121

Hon'ble Judges : Tapan Mukherjee, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Gour Ray Chowdhury and Jugal Ch. Porel, P.K. Das, Pramit Kumar Roy, Rajashree Roy, Lopita Banerjee, Amitava Das and Debaprasad Nath, for the Appellant; Surojit Nath Mitra, Kallol Basu and Debashis Sarkar for respondent Nos. 1 to 9 and Lakshmi Kumar Gupta and S. Banerjee and Arabinda Ghosh and Aparna De Chowdhury for respondent No. 11, for the Respondent

Judgement

Ashim Kumar Banerjee, J.—Premises No. 90/1/2 Jaharlal Nehru Road, Kolkata (hereinafter referred to as the "said building") is a multistoried building under occupation of several tenants and/or occupants. The period of construction, however, could not be ascertained from the records of the proceeding. In 1980 there had been metro railway project undertaken in Chowringhee Road area. The concerned building started tilting. Objection was raised on behalf of the adjoining owners which is also a multistoried building being premises number 90/1/1, Jaharlal Nehru Road, Kolkata owned by a co-operative society, commonly known as "Green Land" (hereinafter referred to as "Green Land"). According to the co-operative society they first approached metro railway authority who in turn asked them to take up the issue with the adjacent building owner asking them to cause repair of the said building. The metro railway authorities, did not, however, show any keen interest to sort out the problem between two building owners. The cause of tilting was a matter of dispute. It might be because of advanced age of the concerned building, it might be for the reason that the adjacent building owner did not take adequate precaution at the time of construction of their

building, it might be because of the metro railway project being undertaken contemporaneously.

2. The then concerned building owner was asked by letter dated August 14, 1981 to repair the said building. They did not. On September 17, 1981 Metro Railway was approached by Green Land. On June 29, 1982 Green Land approached the Corporation by making a complain as per the advice of the metro railway. From 1982 to 1997 no step was taken either by the Corporation for causing an investigation as to the stability of the said building nor any proceeding was drawn up by the Corporation as against the concerned building till 1997 for about 15 years.

3. In 1995 the present appellants purchased 5 floors of the said premises in question being ground, 1st, 2nd, 5th and 6th floors from the then owners of the said building. The other two floors being 3rd and 4th floors were and still are under occupation of one Kanchan Das who was not a party to the proceeding initially. However, by an order dated September 18, 2006 we added him as a party in this appeal. In 1997 after about 15 years the Green Land became active and wrote a letter to the City Architect of the Calcutta Municipal Corporation giving reference to their earlier complaint and asked the Corporation to take immediate steps. This was followed by reminders given in the year 2000 by Green Land. Corporation issued a notice on August 1, 2000 u/s 411(1) of the Calcutta Municipal Corporation Act, 1980 (hereinafter referred to as the "said Act of 1980"), inter alia, asking the owner of the said building to forthwith demolish, repair and/or secure the said building. Objection was raised by the occupants, and/or tenants of the said premises.

4. Writ petition was filed by the tenants challenging the notice u/s 411(1) of the said Act of 1980. The learned Single Judge disposed of the writ petition by an order dated December 19, 2000 directing the Corporation to give personal hearing to all concerned and pass appropriate order in that regard. The learned Single Judge while disposing of the matter observed as follows:

In case the Corporation is of the opinion that the building is so dangerous that the inmates should vacate at once, in that event it may pass appropriate order after hearing the petitioners and the owner even within the said period.

5. Pursuant to the said order of the learned Single Judge the appropriate authority under the said Act of 1980 heard the parties and passed appropriate order for demolition. Before the Hearing Officer the parties relied upon the expert report. The expert appointed by the tenant was of the opinion that the building could be repaired to avoid danger whereas the expert appointed by the appellant/owner was of the opinion that the building was beyond repair and to avoid accident it must be demolished forthwith. The Corporation also got the said building inspected through their own agency. Ultimately considering the reports and/or rival contentions the Hearing Officer came to a conclusion that the said building was liable to be demolished and the occupants were asked to vacate the

said premises.

6. Being aggrieved by, and dissatisfied with, the order of the Corporation dated April 4, 2001 the second writ petition was filed by the tenants and/or occupants of the said premises in question which was heard and disposed of by the learned Single Judge by the order under appeal.

7. At the initial stage the learned Single Judge also appointed another engineer of his choice who submitted his report in a sealed cover which was considered at the time of final hearing. According to the expert appointed by His Lordship the accident could be avoided by causing necessary repair. In effect there had been four reports from four different experts on the subject issue expressing contrary view.

8. The learned Single Judge disposed of the writ petition by the judgment and order under appeal. The learned Single Judge was of the view that the building should be repaired by the tenants as suggested by the Court appointed expert. His Lordship also observed that there should be a part demolition as suggested by one of the experts. Significantly enough, the part demolition so suggested by one of the experts was under occupation of the present owners being the appellants herein. Since such part demolition was not affecting the tenants and/or occupants and the learned Single Judge directed repair the tenants and/or occupants were satisfied with the order and insisted the Corporation as well as the owner to implement the said order.

9. Being aggrieved by and/or dissatisfied with the judgment and order under appeal the present appeal was filed by the Mundras the present owners of the said building.

10. The learned Single Judge took immense pain in considering the contradictory reports filed by different experts in the matter. The learned Single Judge also carefully examined the order of the Hearing Officer directing demolition of the entire premises in question. His Lordship also considered the report of the expert appointed by this Court at the initial stage. After elaborately discussing the point in controversy and the observations of the various experts His Lordship came to a conclusion that the building could be saved by partial demolition as suggested by the Court expert coupled with repair of the remaining portion. The learned Single Judge also put emphasis on the fact that while issuing the notice u/s 411 by the Corporation at the initial stage the Corporation was of the view that the building could be repaired. Hence, there was no occasion for the Hearing Officer to come to a definite conclusion that the said building need immediate demolition. His Lordship observed that the conduct of the Corporation was "thoroughly unsatisfactory". Apart from the expert reports there had been a report by the National Test House which, however, suggested that the existing structure, if retained, might cause fall of the said building as one column of the said building was not in a position to take load of the said building in question. The observation of the National Test House is quoted below:

C. Conclusion:

(a) From the observed value, it is to be noted that building had exceeded the safe tilting (Angular distortion) limit and settlement limit (496 mm as against a maximum of 49.4 mm and 193 mm & 174 mm settlement as against a maximum of 13.41 mm respectively.

(b) From the Ultrasonic Pulse Velocity Test, the quality of concrete is found to be doubleful in the column at South-East corner of the building. The result implies presence of cracks in the structure.

(c) The distress in the building is beyond repair and it is recommended that the building may be demolished.

11. The National Test House in no uncertain term observed that the building was beyond repair and it was recommended that the building should be demolished. The learned Single Judge, however, discarded the reports of the National Test House after considering the various aspects highlighted in the said report. Ultimately His Lordship observed that the Corporation must take appropriate steps to compel the owner of the said building to carry out necessary repair and part demolition in terms of the direction of His Lordship as contained therein. Being aggrieved by, and dissatisfied with, the judgment under appeal the present owners, Mundras preferred the instant appeal.

12. We heard the appeal on August 25, 2006 when we observed that the disputes could be resolved between the parties by taking recourse to an amenable solution and the matter was adjourned from time to time to enable the parties to have joint discussions. We also directed notice to be given to Sri Kanchan Das so that the issue could be resolved in his presence. Accordingly discussions were held between Mundras on the one hand as well as the tenants and/or occupants of the said building on the other hand in presence of Sri Kanchan Das. The matter appeared for settlement before us. We also intervened and tried to resolve the issue. However, we were unsuccessful to that extent. We placed the matter for further hearing on the next date. We heard the parties at length on the abovementioned dates. We also formally added Sri Kanchan Das as a party in this appeal by our order dated September 18, 2006. All the parties were heard including Sri Kanchan Das.

13. Mr. P.K. Das, learned senior Counsel, appearing in support of the appeal contended that the writ petition itself was not maintainable as this being a highly technical matter was not open for judicial review. Mr. Das put emphasis on the report of the National Test House apart from the report submitted by the expert appointed by the appellants. Mr. Das also contended that in absence of Kanchan Das the owner of the 3rd and 4th floor the writ petition was not maintainable as the order of demolition so passed by the Corporation was for the entire building including the portion under occupation of Sri Kanchan Das.

14. Mr. P. K. Das in support of his contention cited the following decisions:

- (i) The University of Mysore and Another Vs. C.D. Govinda Rao and Another, ;
- (ii) Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others, ;
- (iii) Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others, ;
- (iv) (3)2001 CLT 360 (Bijoy Shankar Tiwari v. Calcutta Municipal Corporation and Ors.);
- (v) 2001(1) SCC 564 (Vannattankandy Ibrayi v. Kunhabdulla Hajee);
- (vi) A.P.S.R.T.C. and Others Vs. G. Srinivas Reddy and Others, .

15. Mr. Jugal Porel, learned Counsel led by Mr. Gour Roy Chowdhury, learned Counsel appearing for the Municipal Corporation contended that the order of demolition was passed by the Hearing Officer after giving opportunity of hearing to all the parties. The parties made their submissions before the Hearing Officer. They relied on the reports of the experts. The Corporation also had the building inspected by their own expert. Ultimately relying on the report of the National Test House coupled with the report of the inspection caused by the Calcutta Municipal Corporation officials the order of demolition was passed as it was felt just and proper.

16. Mr. Debasish Sarkar, learned Counsel, led by Mr. Surojit Nath Mitra and Mr. Kallol Bose, learned Counsel appearing on behalf of the writ petitioners/respondents contended that when the writ petition was initially moved the learned Single Judge appointed an expert of His Lordship's choice and such appointment was not challenged by the appellants. Hence, such report was binding upon the parties and the Court was right in relying upon the said report. Mr. Sarkar, further contended that to maintain the equilibrium between the said two buildings which rested in passage of time there was no need for passing an order for demolition and partial demolition and/or repair so suggested by the Court expert and directed by the learned Single Judge was appropriate which would not cause prejudice to any of the parties. Mr. Sarkar supported the order under appeal.

17. Mr. Arabindo Ghosh, learned Counsel appearing for the Green Land contended that when the tilting started they immediately approached metro railway authorities and under their advice Green Land approached the Corporation. Mr. Ghosh categorically pointed out that Green Land was not interested in the internal dispute between the landlords and the tenants of the adjacent building. They were only concerned with safety and security of their own building. Mr. Ghosh suggested that appropriate measures should be taken so that the safety and security of their building was not put in jeopardy. Mr. Ghosh supported the order under appeal.

18. Mr. Laxmi Kumar Gupta, learned senior Counsel appearing for Sri Kanchan Das, the added respondent, contended that since the Municipal Corporation did

not prefer any appeal they were entitled to question the order under appeal. Mr. Gupta further contended that the Green Land made a complain as far back in 1982. The Corporation became suddenly active after a long span of time probably at the instance of the new owner being the Mundra. Such conduct of the Corporation was deplorable and the learned Single Judge was right in commenting on the same. Mr. Gupta drew our attention to the judgment and order under appeal especially the paragraph appearing at pages 615-616 of the paper book. The learned Single Judge doubted the action of the Corporation. His Lordship came to a finding, as we have observed earlier, that the conduct of the Corporation was "thoroughly unsatisfactory".

19. Mr. Gupta also contended that u/s 411(4) the Municipal Commissioner was the appropriate authority to issue appropriate notice under the said provision and to take step accordingly whereas in the instant case the notice was issued by an officer who was not authorized under the appropriate provision. Hence, such notice was bad in law and the order passed thereunder was vitiated by illegality.

20. Mr. Gupta supported the order under appeal. Mr. Gupta, however, could not offer any plausible explanation as to why his client was under deep slumber so long even after passing of the order of demolition of the entire building in question by the Hearing Officer as far back in 2001.

21. We have considered the relevant provisions of the Act of 1980. u/s 411 the Corporation was entitled to issue appropriate notice for demolition and/or repair of a building which was in a ruinous state or was likely to fall or to be in any way dangerous. Under Sub-section (4) the Municipal Commissioner was empowered to give notice for demolition and/ or repair of the said building in question. u/s 48 of the said Act the Municipal Commissioner was empowered to delegate his power under the Act upon appropriate officer. Mr. Roy Chowdhury appearing for the Corporation categorically contended that such delegation was made by the Commissioner in favour of the officer who issued appropriate notice u/s 411. u/s 411 the Corporation was also empowered to issue appropriate notice to vacate and to quit the said building in question upon the inmates of the said dangerous building. u/s 412 the Corporation was also empowered to put back in possession the inmates at a stage as and when the circumstances would permit. In the instant case after the said notice was caused upon the owners and occupants of the said premises in question opportunity was given to raise objection to the said notice and in terms of the directions of this Court the Hearing Officer gave personal hearing to the concerned parties. The Corporation also caused the said building to be inspected by their own expert and after considering the reports the Hearing Officer passed appropriate order for demolition. The parties disclosed contemporaneous photographs as well as recent photographs. On perusal of the photographs even from layman's point of view nobody can join issue if we say that the building needs immediate attention. Be it demolition, be it repair. Only question that remains is whether the concerned building could be repaired to make it habitable. Neither do we have any expertise to decide the issue nor the

learned Single Judge had. It would be dangerous proposition for the Court to have a judicial review on such highly technical matter specially when safety and security not only of the building but also of the inmates of the building was in question. The Corporation having the benefit of expertised authorities passed an order of demolition of the said building as according to it the building was beyond repair and if it was allowed to stand it would certainly fall on one day causing casualty to the inmates.

22. If we uphold the order of Corporation not only the inmates but also the adjoining building owner might suffer prejudice as we do not know whether demolition of the said building would cause insecurity to the adjacent building apart from the question of the inmates being homeless. On the other hand if we affirm the judgment of the learned Single Judge the retention of the said building even after partial demolition and repair may cause prejudice to the adjacent building as well as the inmates of the concerned building. There are as many as four engineers' report apart from the inspection caused by the Corporation. There was also a report from the National Test House being an independent body. We express our inability to decide who was right and who was wrong as we admit that we do not have sufficient expertise to judge those reports. The learned Single Judge might have from his own expertise did it but this would be a dangerous attempt on the part of the Court and would amount to travelling beyond the scope of judicial review.

23. The learned Single Judge expressed doubt with regard to the conduct of the Calcutta Municipal Corporation Authorities. His Lordship might be correct. However, one aspect might have been overlooked by His Lordship that the Corporation became active after receipt of the complaint made by Green Land in 1997 whereas Mundra purchased the property in 1995.

24. We are in full agreement with His Lordship that the Corporation should have taken steps as per written complaint made in 1982. Fortunately there was no accident in between which could have taken lives of the inmates of the said premises in question had the said building been collapsed between 1982 to 1999. However, the Corporation at the instance of Green Land or Mundra became active later on which resulted in issuance of the notices u/s 411. Even if we accept the contention of the writ petitioner/ respondents that the action on the part of the Corporation was not above board as found by the learned Single Judge we express our helplessness in intervening in this situation as neither we have any expertise nor we should do it as this is not within the scope of judicial review.

25. It is true that the order of demolition would make the inmates of the said building homeless. Appropriate law is there to protect their interest. u/s 412 the Municipal Commissioner is empowered to put them back in possession as soon as new building comes up on the land in question after demolition. Our tenancy law also protects the tenants residing therein as and when the new building comes up. In this regard we feel that appropriate direction could have been given by the learned Single Judge to protect the inmates and their rights by taking

appropriate measure in this regard without touching the order of demolition.

26. We are constrained to hold that the entire exercise by the learned Single Judge who took immense pain to consider the issue in detail including the various reports of the experts was wrong.

27. Before we come to a conclusion in this appeal we intend to make some observations with regard to the conduct of Sri Kanchan Das. He claimed to be the owner of the 3rd and 4th floor of the premises in question. Since at the appellate stage he was added as a party and his Counsel was allowed to argue the matter by placing his point of view no written comment and/or pleading could be filed on behalf of the Kanchan Das before us. We assume that he had appropriate authority in law to retain the 3rd and 4th floors of the said building in question. We are, however, unable to appreciate that how a person having substantial interest in the building in question could keep himself in deep slumber for so long until and unless he was brought in Court by us. Mr. Gupta made comment on the authority and propriety of the appropriate officer while issuing the notice u/s 411. He could do so by filing a writ petition. He could do so by adding him a party in the proceeding. It might be true that he was not aware of the proceeding before this Court, even then we cannot find any answer why he did not take any independent step against the order of demolition.

28. Considering the entire aspect as discussed above, we feel that the order of the learned Single Judge should not be retained and we must hold that the writ petitioner was not entitled to question the authority and propriety of the order impugned in the writ petition. The writ petitioner could have in our considered view approached the Writ Court for protection of their interest in the event of demolition. There had been also appropriate Court under the Tenancy Law to protect the tenants. The Writ Court could have been also approached considering the urgency. Writ petitioners were, however, bent upon to have the order of the Hearing Officer set aside than to protect their own interest under the statute which was, however, outside the scope of judicial review especially in writ jurisdiction.

29. By passage of time the said building could withstand such tilting. Admittedly there was no repair caused to the said building (at least not brought to our notice). Fortunately no accident occurred in between. The order impugned in the writ petition was passed in April, 2001. We would be approaching 2007 very shortly. We feel that the Corporation may review the situation once more. We, however, make it clear that the order of the Hearing Officer would remain as no interference could be made by this Court. The Corporation through their own agency would examine the condition of the said building once more and if they feel that the order of Hearing Officer needs any further variation they made do so. This exercise must be done by the Corporation after taking into account the experts' reports so disclosed in this proceeding including the experts so appointed by the Court. If the Corporation feels that despite consideration the order of the Hearing Officer needs no alteration and/or variation they must

compel the owners, the appellants abovenamed demolition of the said building with immediate effect. Before demolition is caused the owners/appellants must give an undertaking to the Corporation that they would reconstruct the said premises in question as per the existing building rules and would put the tenants and/or occupants of the said premises in question back in possession after such reconstruction is caused in accordance with law. Since Sri Kanchan Das was not a tenant under the appellants he would be obliged to bear the proportionate cost, charges and expenses for reconstruction of his proportionate share in the building in accordance with law. In this regard the writ petitioners, Sri Kanchan Das and/or appellants may approach the appropriate Civil Court to protect their respective interest. We again make it clear that approach to the Civil Court or reconsideration by the Corporation would not cause any hindrance at all in having the order of the Corporation so passed by the Hearing Officer if modified or not in terms of this order being complied with. The Corporation must take steps in terms of the direction of this Court and complete the exercise within a period of three months from date. The appellants, writ petitioners and Shri Kanchan Das are also directed to render all necessary co-operation to the Corporation to have this order complied with. In case the Corporation decides demolition of the said building it will, however, give one month time to the inmates to vacate the said house so that the demolition could be effected. In case of default in vacating the said premises the Corporation would be entitled to take appropriate steps in accordance with law against such defaulting occupants.

30. The order under appeal is modified accordingly.

31. The appeal is disposed of accordingly without any order as to costs.

32. There would be a stay of operation of this judgement and order for a period of four weeks from date.

33. Urgent xerox certified copy would be given to the parties, if applied for.

Tapan Mukherjee, J.

34. I agree.