

(2003) 08 CAL CK 0003
In the Calcutta High Court

Case No : APO No. 195 of 2002 and W.P. No. 2207 of 2001

Sardarmull Kankaria

APPELLANT

Vs

Calcutta Improvement Trust and Others

RESPONDENT

Date of Decision : 05-08-2003

Acts Referred:

Calcutta Improvement Act, 1911 — Section 81(1), 82(2)
Constitution of India, 1950 — Article 226

Citation : (2004) 2 CHN 309 : 107 CWN 896

Hon'ble Judges : Ashok Kumar Mathur, C.J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : P.K. Roy and R.N. Das, for the Appellant; P.K. Das and P.S. Bose, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.—The appellant was the owner of Plot No. 14 of Scheme No. LXVI, CIT Scheme. The property was initially numbered as 19, Chatawalla Gullee. In or about 1955 the subject property was acquired under the provisions of the Land Acquisition Act, 1894 for the purpose of an improvement scheme under the Calcutta Improvement Trust (hereinafter referred to as "CIT"). Section 81 of the Calcutta Improvement Act, 1911 (hereinafter referred to as the "said Act of 1911") provides for disposal of the land found to be surplus by the CIT. Section 81 of the said Act being relevant herein is quoted below:

"81. Power to dispose of land.--(1) The Board may retain, or may let on hire, lease, sell, exchange or otherwise dispose of, any land vested in or acquired by them under this Act.

(2) Whenever the Board decide to lease or sell any land acquired by them under this Act from any person, they --

(a) shall give notice by advertisement in local newspapers, and

(b) shall offer to the said person, or his heirs, executors or administrators, a

prior right to take on lease or to purchase such land, at a rate to be fixed by the Board, if the Board consider that such a right can be given without prejudice to public interest or detriment to the carrying out of the purposes of this Act.

(3) If in any case two or more persons claim to exercise a right offered under Clause (b) to take on lease or to purchase any land, the right shall be exercisable by the person who agrees to pay the highest sum for the land, not being less than the rate fixed by the Board under that clause, to the exclusion of the others.

(4) Notwithstanding anything contained in Sub-sections (2) and (3) or in any other provision of this Act when the Calcutta Metropolitan Development Authority constituted under the Calcutta Metropolitan Development Authority Act, 1972 (hereinafter referred to as the Authority), or the West Bengal Housing Board constituted under the West Bengal Housing Board Act, 1972 (hereinafter referred to as the Housing Board), requires any land vested in or acquired by the Board under this Act, for carrying out any of the purposes of the Act under which the Authority or the Housing Board, as the case may be, was constituted, the Authority or the Housing Board, as the case may be, may ask the Board to let on hire, lease, sell, exchange or otherwise dispose of such land to itself and the Board shall comply with such demand and forthwith transfer possession of such land in favour of the Authority or the Housing Board.

(5) The amount of consideration at which any land shall be let on hire, leased, sold, exchanged or otherwise disposed of under Sub-section (4) shall be such as may be agreed upon between the Authority or the Housing Board, as the case may be, and the Board and if they fail to reach an agreement the parties or any of them shall refer the matter to the State Government and the decision of the State Government thereon shall be final."

2. Under Sub-section (1) of Section 81, CIT is empowered to retain, or hire or lease or sell or exchange or otherwise dispose of, any land vested in or acquired by them under the said Act of 1911. Sub-section (2) provides for the procedure for such disposal. In case Board decides to sell any land, it shall give notice by advertisement in local newspapers and shall offer the said plot to the original owner to have it purchased at the rate to be fixed by the Board, provided however, the same is not detrimental to public interest.

3. In the year 1962, CIT decided to sell Plot No. 14 to ESI Corporation being a statutory Government Organization at the rate of Rs. 38,000/- per cottah which was subsequently reduced to Rs. 36,500/- per cottah. The said price was fixed by the land committee of CIT in its meeting held on 3rd February, 1962.

4. On 5th February, 1962 CIT formally offered the said land to ESI Corporation at the rate of Rs. 36,500/- per cottah. Upon coming to know of the said fact the appellant by notice dated July 20, 1962 exercised his right of preemption in terms of Section 81(2)(b) of the said Act of 1911. The CIT by its letter dated August 7, 1962 rejected the prayer for purchase of the said land by exercising right of pre-emption by the writ petitioner on the ground that since the plot was

being sold to ESI Corporation being a statutory Government organization, the right of pre-emption did not arise. Such decision of CIT gave rise to litigations. Appellant filed a suit in this Court being Suit No. 1651 of 1962, inter alia, claiming right of pre-emption. ESI Corporation filed a suit for specific performance being Suit No. 393 of 1975. Both the suits were disposed of by a judgment and decree dated August 22, 1978. The learned Single Judge allowed the suit for specific performance filed by the ESI Corporation and dismissed the suit of the appellant. Three appeals were preferred by the rival parties. All the three appeals were heard by a Division Bench of this Court. The Division Bench allowed the appeal of the appellant and inter alia, held that the appellant was entitled to exercise his right of pre-emption u/s 81(2)(b) of the said Act of 1911. In the other appeals the Division Bench set aside the decree for specific performance by allowing the appeal holding that the appellant was entitled to exercise his right of pre-emption by purchasing the plot in question "at a rate to be fixed by the Board if the Board considered that such a right could be given without prejudice to public interest or detriment to the carrying out of the purpose of Calcutta Improvement Act.....". Review applications were filed by the parties before the Division Bench being aggrieved by the said judgment and order, which were dismissed.

5. The parties accepted the decision of the Division Bench and acted thereupon.

6. By a letter dated June 30, 1999 CIT asked the appellant to appear before the Officer on Special Duty for hearing. The hearing was given to the appellant by the concerned officer. Thereafter a reasoned order was passed by CIT wherein the CIT accepted the prior right of the appellant to purchase the concerned plot and also held that the subject plot was not required for CIT's own purpose. By the said order the appellant was granted liberty to purchase the plot "as is where is" basis at market rate for a sum of Rs. 18 lakhs per cottah as determined by the CIT by the said reasoned order. The said reasoned order of the CIT was made a matter of challenge in the subject writ petition. Learned Single Judge considered all aspects and the rival contentions of the parties and dismissed the writ petition by holding that CIT passed the said reasoned order in true compliance of the judgments and decrees passed by the Division Bench.

7. The appellant before us contended that once the right of pre-emption was recognized by the Court and the action of the CIT attempting sale of the plot to ESI Corporation was quashed the appellant was entitled to purchase the land at the price fixed in 1962 by CIT i.e. the rate at which CIT attempted sale of the plot in question to ESI Corporation.

8. It was contended on behalf of the appellant that the decision to sell the land was taken in 1962 by the CIT. The price was fixed by the land committee in 1962 itself. Hence the appellant was entitled to exercise his option in 1962. Since such right was recognized by the Court of Law after the pronouncement of the decision by the Division Bench in 1998 the CIT was not entitled to offer a higher price considering the prevalent market rate.

9. In support of their contentions the appellant cited the following decisions:

(1) Beg Raj Singh Vs. State of U.P. and Others,

(2) S.V.R. Mudaliar (Dead) by Lrs. and Others Vs. Rajabu F. Buhari (Mrs) (Dead) by Lrs. and Others,

(3) Bishan Singh and Others Vs. Khazan Singh and Another,

10. Relying on the aforesaid first two decisions of the Apex Court it was contended on behalf of the appellant that once the decree was pronounced by a Court of Law it automatically related back to the date of institution of the suit. The time taken by the judicial forum in pronouncement of its verdict should not prejudice the right of the party in whose favour the pronouncement was made.

11. The respondent in the appeal being CIT while supporting the impugned judgment and order under appeal, contended inter alia, as follows:

(i) The subject writ petition was nothing but an attempt to execute the decree of the Civil Court passed by the Court of Appeal which was not permissible in law. Reliance was placed in this regard on the Apex Court decision reported in Ghan Shyam Das Gupta and another Vs. Anant Kumar Sinha and others,

(ii) The parties accepted the verdict of the Division Bench by not challenging the said order before the Apex Court. The parties also acted upon the said decision which had resulted in the reasoned order of CIT. Hence the decision of the Civil Appellate Court was binding upon the parties. The Civil Appellate Court by its judgment and order dated 31st August, 1998 expressly gave liberty to the appellant to exercise his right of pre-emption by purchasing the said plot at the price to be fixed by the CIT. Since CIT fixed the price, the appellant was bound to pay the same while exercising the right of pre-emption.

(iii) In the suit filed by the appellant, a definite prayer was made for direction upon the CIT to sell the plot in question at the rate of Rs. 36,500/- per cottah. Such prayer was not allowed by the Division Bench. Hence the decision of the Civil Appellate Court was conclusive and attained finality. Contention of the appellant contrary to such decision of the Civil Appellate Court was hit by principles of res judicata and/or constructive res judicata.

12. We have examined the judgment and order under appeal. It appears to us that the learned Single Judge in detail considered the submissions of the rival parties and discussed the decisions cited by them. The decision of the learned Single Judge was not only exhaustive but also well reasoned.

13. The moot question herein is whether CIT was entitled to fix the price in 1998-99 in terms of the specific liberty given by the Civil Appellate Court. We are in complete agreement with the learned Counsel for the appellant that a relief, if granted subsequently by a judicial forum, would automatically relate back to the date when the original action was challenged. The Apex Court decisions on that score are well settled principles of law. The applicability thereof in the instant

case, however, is in doubt. The appellant in his suit inter alia, prayed for mandatory direction upon the CIT to sell the plot in question at the rate of Rs. 36,500/- per cottah or "at a rate to be fixed by the board.....". (A copy of the plaint was produced in course of hearing). The said prayer had two limbs i.e. purchase at the rate of Rs. 36,500/- per cottah or at the rate to be fixed by the Board. We have examined the decision of the Division Bench. We are of the view that the first limb of the said prayer was specifically not allowed by the Division Bench. The said two judgments and decrees of the Division Bench read together would conclusively infer that the second limb of the said prayer was allowed by the Division Bench. In short CIT was specifically given liberty to fix the price which was done by the reasoned order of CIT. It was not the case of the writ petitioner that such fixation was arbitrary (at least not argued before us). The appellant only contended that they were entitled to purchase the plot at the rate of Rs. 36,500/- per cottah in terms of the decision of the Division Bench. We have carefully examined the decision of the Division Bench. Such contention of the appellant does not find support from the said two judgments. u/s 81(2)(b) of the said Act of 1911, CIT was bound to offer the plot to the original owner at a rate to be fixed by the Board. Such right was only recognized by the Division Bench. The fixation of price was left to the discretion of the Board.

14. The appellant tried to contend that the decision to sell the property was taken in the year 1962 and the right of pre-emption was to be exercised in 1962 itself and the price prevalent at that point of time should be the price at which the appellant was entitled to purchase the property. The right of pre-emption as defined by the Apex Court with reference to the other laws including the Partition Act is that such right can only be exercised when the actual sale is going to take place. Reference may be made in this regard to the decisions of the Apex Court in the case of Indira Bai Vs. Nand Kishore, cited by the appellant and respondents respectively. The attempt to sell the land to ESI Corporation was quashed by the Civil Appellate Court. Since such decision to sell the land in 1962 was quashed by the Division Bench, there was no question to exercise option for purchasing the said plot at the rate on which the property was attempted to be sold. Division Bench gave special liberty to the appellant to purchase the property at a price to be fixed by the Board irrespective of any attempt to sell the said plot by compliance of Section 81(2)(a). If the appellant wanted to achieve benefit out of such liberty, they would have to accept the condition attached thereto. Once the Division Bench gave liberty to the appellant to purchase the property at a price to be fixed by the Board, appellant was not entitled to question the price. If the appellant was not satisfied with the price, choice was left open to the appellant for rejecting the offer of sale.

15. Since we have just now held that the liberty given to the appellant by the Division Bench to purchase the property was a condition precedent and such condition cannot be segregated the other points raised by the CIT noted above need not be discussed.

16. In this backdrop we once again observe and hold that the learned Single Judge very rightly dismissed the writ petition of the appellant and we do not find any scope for interference.

17. In the result the appeal fails and is hereby dismissed.

18. There will be no order as to costs.

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

Ashok Kumar Mathur, C.J.

I agree. Later:

20. Prayer for stay of operation of the judgment is rejected.

Ashok Kumar Mathur, C.J. & Ashim Kumar Banerjee, J.: