

(1999) 10 CAL CK 0034
In the Calcutta High Court

Case No : Civil Appellate Jurisdiction, Appeal from Original, Order Tender No. 4014 of 1998

Sri Shyamlal Agarwalla

APPELLANT

Vs

Sri Ashim Burman and Another

RESPONDENT

Date of Decision : 05-10-1999

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 170, 193, 2(62)
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (2000) 1 CALLT 503

Hon'ble Judges : Vinod Kumar Gupta, J; Prodyot Kumar Sen, J

Bench : Division Bench

Advocate : Mr. Bimal Chatterjee and Mr. Prabir Dasgupta, for the Appellant; Mr. Tapas Banerjee, Mr. Barin Banerjee and Mr. Mantu Pal, for the Respondent

Judgement

V.K. Gupta, J.—We are being called upon to deal with a peculiar case wherein the alleged obligation of the appellant to pay consolidated rate of tax in terms of section 170 read with section 193 and other provisions contained in Chapter XII of the Calcutta Municipal Corporation Act, 1980 (hereinafter to be referred to as the Act) is the subject matter of a dispute between the parties. This appeal is directed against the order dated 30th October, 1998 passed by the IXth Bench of the learned City Civil Court at Calcutta whereby the application filed by the appellant under Order 39 Rules 1 and 2 read with section 151 of the CPC for grant of temporary Injunction was disallowed by the learned court below and accordingly the prayer of the appellant for Injunction was refused.

2. The appellant had filed the aforesaid application for temporary Injunction in a civil suit wherein he had challenged the power, right, authority and Jurisdiction of the respondents in levying and demanding from the appellant the aforesaid consolidated rate of tax under the Act. When we observed in the opening part of their Judgment that we have to decide this case based on some peculiar circumstances, we are referring to spate of litigation between the parties with respect to a Fourteen storeyed building in the City of Calcutta which was

constructed wholly illegally and totally unauthorisedly by the appellant. Right from the very Inception of the construction of the building, floor by floor, level by level, when the Respondent Corporation had been objecting to the same by passing demolition orders, one after another, but on one pretext or the other, on one ground or the other, these demolition orders were not being allowed to be implemented, mostly through the assistance of the courts by obtaining one order or the other from the lowest civil courts upwards. Ultimately this litigation as far as the appellant is concerned, came to an end by the passing of the order by the Supreme Court in 1983 whereby for the last time, the SLP filed by the appellant against the Division Bench Order of this Court was dismissed and the Corporation was directed to demolish the topmost four floors of the building in question. It was also ordered by the apex court on 28.2.83 that the tenants in occupation of the building would stop paying rent to the appellant and would in stead deposit the rent before the Registrar (Appellant Side) of this court. After February, 1983, the appellant stopped receiving any rent from his tenants since the tenants started depositing the same with the Registrar (Appellant Side) of this court. After the SLP of the appellant had been dismissed by the Supreme Court, the tenants in occupation of the building started their own round of litigation. But they having failed before the Division Bench of this court also preferred a SLP in the Supreme Court which was finally dismissed on 20.8.96. Their Lordships of the Supreme Court, while dismissing Civil Appeal No. 6416 of 1983 arising out of the aforesaid SLP filed by the tenants, clearly, categorically and unequivocally observed and held that the appellant originally and the tenants thereafter had abused the process of the court and by such gross abuse, had obtained orders stalling the demolition work for a long time and that the Supreme Court had been very Indulgent to the appellant and later on to the tenants. Produced hereinbelow are the most pertinent observations to that effect contained in the Judgment dated 20.8.96:

"Thereafter, the SLP was adjourned to 10th August, 1983, we have reproduced all the conditions to give a comprehensive idea of the Indulgence shown by the court in regard to the building in question in as much as the court appointed the Architect/Engineer Dr. K.K. Banerjee of M/s. Engineering Consultants who had been engaged by the tenants/owner of the building, so also the court appointed their advocate as court official for carrying out certain directions. The Bank of Rajasthan Limited had Intervened in the said proceedings and, therefore, certain directions were given in relation to that Bank. The conditions set out in the said Interim order have relevance because the two Interim orders passed by this court clearly Indicate that the court's anxiety was" to save the building if it was possible to do so consistently with the rules, regulations and bye laws of the Municipal Corporation and the safety of not only the occupants of the building, but the neighbouring buildings and the passers by also. Thereafter, on 26th August, 1983 Special leave was granted on condition that the directions given in the interim order of 20th February, 1983 will have to be carried out and the appellant's architect Dr. K.K. Banerjee was directed to submit a report in respect

of the progress of the work of demolition of the four topmost floors and the removal of defects and deficiencies for strengthening the building and ensuring that fire safety regulations were set Dr. Banerjee submitted an Interim report on November 17,1983 and a final report on January 4,1984."

3. After this having noticed the fact about the deficiencies in the building and Its construction quality and having entrusted the work of assessment to Dr. K.K. Banerjee. the apex court referred to the observations of Dr. Banerjee. The relevant extract whereof we quote hereinunder :

"To put in briefly he found fault with the work undertaken by M/s. Ghosh, Bose and Associates which, in our opinion, does not require a detailed examination. However, on the basis of his own approach he came to the conclusion that there were certain deficiencies in the existing building which would have to be removed and that the existing work would have to be strengthened. In regard to fire safety requirements he points out that the building as it stands has many limitations particularly, in respect of creating additional space for storage of water at ground level and providing second stair as fire escape. He noticed that there is a need to construct a second stair case which can be done by dismantling certain portion of the floor and connecting beams at every floor level necessitating vacating of the building by the tenants from the ground floor to the 9th floor of that portion which would be needed for construction of the stair case. He, however, points out that since this was a matter which fall outside the terms of reference of this court's modified order he did not deem it appropriate to consider the same. He also noticed that the petitioner were not inclined to take up any of the construction for the additional stair on the plea that there are many number of tall buildings in Calcutta which were without second stair case. He concludes his report by saying that all works stipulated in paragraph 5 of this court's order of 28th February, 1983 have been completed "as far as possible" except the provisions in regard to second stair case as part of fire safety arrangement."

4. Curiously but very very Importantly, the very own Deputy City Architect of the Calcutta Municipal Corporation, one Shri Gora Chand Mondal, in his affidavit dated 3rd April, 1990 filed in the Supreme Court, pointed out some discrepancies in the report of Dr. K.K. Banerjee, but unequivocally, categorically and definitely came up with a stand that the building was very very unsafe and it was built on unsafe foundation and that Its demolition was the only way out. We reproduce hereinbelow the observations of their Lordships with regard to the stand taken by the Calcutta Municipal Corporation through the affidavit of its own Deputy City Architect. We quote as under :

"According to him in so far as fire safety is concerned the building continues to remain a death trap and none of the major fire safety requirements had been provided in respect of the order of this court. The second exit stair-case has not been provided and even without that staircase the provision made by Dr. Banerjee is grossly Inadequate and leaves the building totally unsafe should it

catch fire. He further points out that Dr. Banerjee has not taken care to attend to the serious deficiencies in the foundation of the building but has merely criticised the court appointed Engineers M/s. Ghosh. Bose and Associates rather than he himself strengthening the building. He also points out that notwithstanding the work carried out under the provisions of Dr. Banerjee the building as it stands Infringed several mandatory rules which are essential to be observed for granting sanction to the building. In paragraph 14 of the affidavit he makes a pointed mention about the requirements of Clause 3, 4 and 5 read with clause 12 in the modified interim order of this court dated February 28, 1993 and states that even these requirements have not been satisfied. He then deals with the final report of Dr. Banerjee, and points out Its drawbacks and then concludes as under :

"If this unauthorised construction is allowed to stand notwithstanding these breaches, then the building, will continue to stand until the disaster takes places in the nature of out brake of fire in the building and/or collapse of the building causing lives of persons in the building at that particular point or time, endangering the lives of the occupants of the neighbouring building and persons and passers by in and ground.

That is why in paragraph 8 of the affidavit he states that it is impossible to regularise such a building and requests the court to be excused from agreeing to the proposal for regularisation which violates the laws and mandatory provisions made for ensuring the safety of the building. He also points out in his affidavit that the number of columns in the building have been overstressed in the range of 69.82% to 117.2%, the beams have been overstressed between 75% and 264% etc. leaving the building in a very unsatisfactory state. He betrays his agony when he says that in his view this unauthorised construction has been put up by an unscrupulous person taking advantage of the court's order and he has been guilty of abusing the process of the court. It is not necessary for us to mention in detail the various factors pointed out by him which go to make the building thoroughly unsafe and hazardous for human occupation."

5. After having thus focussed sharply on the aforesaid aspect of the building in question, namely Its unauthorised construction, the indulgence shown by the Supreme Court first to the appellant and then to the tenants, the report of Dr. K.K. Banerjee and finally the stand taken by the Corporation itself, their Lordships took note of the request of the tenants for grant of further time for removing the existing deficiencies in the building, but after having taken into account such request, declined to grant any relief and, purposely and with clear mind held that such a request was merely a plea to bite for time and that the tenants having themselves to be blamed, refused to grant any further time with regard to the demolition of the building. The following observations of their Lordships are opposite :

"Not only that, several other deficiencies pointed out by the Deputy City Architect in his affidavit have remained unattended over all this period of time. We, on

perusal of the record are satisfied that this is a case of the owner in the first Instances and thereafter the tenants abusing the process of the court with a view to delaying the demolition of the wholly unauthorised structure. We cannot countenance such violation of the building rules and requirements which continue notwithstanding the Indulgence shown by this court through the Interim orders of 3rd May, 1982 and 28th February, 1983. We share the feeling of the Deputy City Architect when he states in paragraph 18 of his affidavit that this is a case in which an unscrupulous builder took advantage of the court's order upto a point of time and after he failed in the legal process upto this court the tenants were set upto delay the inevitable and thus in this manner the unauthorised structure, hazardous and unsafe has stood all these years. We have, therefore, no manner of doubt that this is a case in which exemplary cost should be awarded."

6. Ultimately dismissing the appeal of the tenants, the Supreme Court passed the following operative order:

"In the result, this appeal falls and is dismissed. We further direct that no court shall entertain any suit or proceeding in relation to this particular building in so far as the carrying out of the three demolition orders of the Municipal Corporation are concerned. The Municipal Corporation will be at liberty to take police assistance in executing the demolition orders. However, in order to give the occupants an opportunity to make alternative arrangements we direct that the demolition orders be carried out after three months. As stated earlier, we have come to the conclusion that the appellants have been guilty of abusing the process of the court and it is most unfortunate that the Bank of Rajasthan Limited has also been a party thereto. We, therefore, quantify the cost of Rs. 1 lakh."

7. It is indeed Ironically that the same very Calcutta Municipal Corporation whose City Architect had filed the aforesaid affidavit, has not taken steps for demolition of the building so far. On 23rd August, 1999, we had directed the Corporation, in the light of the aforesaid order of the Supreme Court, to file a comprehensive supplementary affidavit indicating to us the steps taken by the Corporation for the demolition of the building. We have gone through that affidavit, but it is our painful duty to express our anguish that the Corporation has not offered any plausible explanation with regard to any steps taken by it about the task of demolition of the building. The affidavit of Sri Samarendra Sen Gupta filed pursuant to our aforesaid order is replete with either half-hearted measures being taken or such measure as in normal course can never lead the Corporation to the demolition task at all. How and in what manner is the order of the Highest Court of the land not being Implemented, is indeed a sorry state of affairs. We leave the matter at that.

8. We have referred to the aforesaid facts and circumstances only to highlight the fact that since 28th February, 1983, the appellant has had nothing to do with the building. Even the rent he had stopped receiving since it was ordered to be deposited with the Registrar (Appellant Side) of this court. Further, since 1983

Itself this building has been under the orders of demolition as far as the Corporation is concerned. For most untenable and unexplained reasons. It has not been demolished so far, is an altogether different story. The question which emerges for our consideration is whether in this background, the Corporation can levy, impose or recover any consolidated rate of tax from the appellant u/s 170 read with section 193 and other provisions of Chapter XIII of the Act To us it prima facie appears that perhaps the Corporation cannot do so, and for two simple reasons :

9. Firstly, from the definition of "owner" as occurring in section 2(62) of the Act, it can be safely said that the complexion of "ownership" as far as the appellant is concerned changed after 28.2.83, because the appellant stopped receiving the rent from his tenants since the rent was being deposited with the Registrar (Appellate Side) of the court. Section 2(62) of the Act reads thus :

"2(62) "owner" includes the person for the time being receiving the rent of any land or building or of any part of any land or building, whether on his own account or as agent or trustee for any person or society or for any religious or charitable purpose or as a receiver who would receive such rent if the land or building or of any part of the land or building were let to tenant"

10. The aforesaid definition clearly suggests that the learned court below went wrong with its interpretation of this provision relating to the definition of owner because the very plain language the sub-section clearly suggests that the definition of "owner" has a direct nexus with the receipt of rent in respect of the building in question. In fact if the receipt of rent, if it is linked with the definition of "owner", then it leaves no one in any doubt that the person who either on his account or as an agent or trustee or as receiver, if receives rent, shall be deemed to be the "owner" of the building. We have no hesitation in saying prima facie that from 28.2.83 as far as the definition of "owner" as occurring in section 2(62) of the Act is concerned, perhaps the appellant ceased to be one and was thus not liable to pay the taxes.

11. Secondly, the attempt to impose, levy or recover tax from the appellant in respect of a building with which he legally, physically and completely washed his hands off as early as in 1983, may also not be permissible, As far as the appellant is concerned, the order of demolition being final way back in 1983, for him, the building ceased to exist. In that background therefore demanding the tax for this building from 1983 onwards would be contrary to the provisions of law.

12. Undoubtedly, the respondents would be at liberty, however, to appropriate the amount deposited with the Registrar (Appellate Side) of this court towards the realisation of their tax dues. To that extent, we have no doubt that it shall be permissible for them to do so.

13. Based on our aforesaid observations, therefore, we allow the appeal and set aside the order of the learned court below. We direct that till the final disposal of

the suit, the respondents shall not recover any tax in terms of Chapter XII of the Act from the appellant in so far as any period after 1983 is concerned. We also permit the respondents to withdraw from the Registrar (Appellate Side) of this court the amount so far deposited with him by the tenants as rent for adjusting the same against their tax demand. Such withdrawal shall however be on condition of the Commissioner, Calcutta Municipal Corporation or his nominee furnishing an undertaking to the Registrar (Appellate Side) of this court that in the event an adverse order is passed against the Corporation, this amount shall be refunded/paid over the persons directed by the court with Interest at the rate of 12% per annum.

14. The appeal is disposed of, but without any order as to costs.

P.K. Sen, J.

15. I agree.

16. Appeal disposed of