
(2019) 08 CAL CK 0277

In the Calcutta High Court

Case No : Tender Of Mand Appl (MAT) No. 907 Of 2019, Civil Application (CAN)
No. 6751 Of 2019

State Of West Bengal And Ors

APPELLANT

Vs

Ganesh Real Estate Private Limited

RESPONDENT

Date of Decision : 26-08-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 2 Rule 2

Citation : (2019) 08 CAL CK 0277

Hon'ble Judges : Biswanath Somadder, J; Arindam Mukherjee, J

Bench : Division Bench

Advocate : Abhrotosh Majumdar, T. M. Siddiqui, Nilotpall Chatterjee, Surojit Nath Mitra, Gurudas Mitra, Atanu Roychaudhuri, Pushan Majumdar

Final Decision : Disposed Of

Judgement

Arindam Mukherjee, J

1. The appeal arises out of an order passed on 5th April, 2019 in a contempt petition being CPAN 44 of 2018 (Sri Ganesh Real Estate Private Limited Vs. Mr. Bani Prasad Das and Ors.). The contempt petition was filed by the writ petitioners being Sri Ganesh Real Estate Private Limited and its officer (hereinafter referred to as respondents/writ petitioners) on account of alleged violation of the order dated 31st July, 2017 passed in WP 8047 (W) of 2014 (Sri Ganesh Real Estate Private Limited Vs. The State of West Bengal and Ors.).

2. The prayers in the writ petition are as follows:-

(a) "A writ of and/or in the nature of Mandamus commanding the respondents and each one of them and their men, agents and sub-ordinates to pay and/or release the compensation, damages, value of structures, solatium, interest, etc. under present market value for taking possession of a portion of land measuring about 0.61 acres together with structures of 12,500 sq.ft. more or less at premises no.27, Nityadhan Mukherjee Road, Howrah -711101 pertaining to

Mouza-Howrah, Dag Nos. 81(P) and 84 (P) forthwith.

(b) A writ of and/or in the nature of Certiorari commanding the respondents and each one of them and their men, agents and sub-ordinates to transmit the entire records of the case including the order or decision for not settling the amount of compensation, etc. under present market value in favour of the petitioner for taking possession of a portion of land measuring about 0.61 acres together with structures of 12,500 sq.ft. more or less from the premises no.27, Nityadhan Mukherjee Road, Howrah-711101 pertaining to Mouza-Howrah, Dag nos. 81(P) and 84(P) so that conscionable justice may be done and to certify the same and on being so certified, quash the same.

(c) Rule Nisi in terms of prayers (a) and (b).

(d) An order to issue directing the respondents and each one of them and their men, agents and sub-ordinates to forthwith release the amount of compensation, damages, value of structures solatium, interest, etc. under present market value to the petitioner for taking possession of a portion of land with structures at premises no.27, Nityadhan Mukherjee Road, Howrah-711101 pertaining to Mouza-Howrah, Dag nos. 81(P) and 84(P).

(e) Ad-interim order in terms of prayer (d) above.

(f) To pass order for cost and incidentals of this proceeding.

(g) To pass such other or further order or orders as to this Hon'ble Court may deem fit and proper".

3. Before we go into the order impugned, the order dated 31st July, 2017 is set out in its entirety:-

"The learned Additional Advocate General has come up before this Court with a very fair proposal. Admittedly, 0.3834 acres of the subject land are in the possession of the Government. The Government is agreeable to buy it from the writ petitioner at the market value to be assessed by the Inspector General of Registrar, West Bengal.

Let demarcation of the land along with such valuation be made within six weeks of communication of this order to the Inspector General of Registration. Out of this amount the petitioner has already received Rs.1,56,06,188/- from the Government. The sum of Rs.3,65,28,281/- was lying in deposit in the account of the petitioner with the Punjab National Bank, Park Street Branch, Kolkata. After deduction of T.D.S. there is a balance of Rs.3,28,75,453/- in that account. This latter sum was received by the petitioner from the Government pursuant to an earlier order of this Court, and is being held by them in the said Bank. The demarcation or delineation work will be done upon adequate notice to the petitioner and in the presence of the parties. The petitioner will execute the necessary conveyance in favour of the Government and register it. This exercise should be completed within a further six weeks of valuation and demarcation of

the land.

Similarly with the execution and registration of the conveyance, the petitioner will appropriate the said amount of Rs.3,28,75,453/- in Punjab National Bank to themselves. The difference between the valuation and the payment already received by the petitioner (Rs.3,65,28,281/- + Rs.1,56,06,188/-) will be paid by the Government to the petitioner by cheque or draft at the time of execution and registration of the conveyance. As far as the balance land is concerned, the Government will issue a written confirmation that it is not in their possession and the petitioner may take such steps as may be available in law to them to obtain possession of the land if they are so entitled to.

This writ application is accordingly disposed of".

4. Since the said order dated 31st July, 2017 was not complied with, the respondent/writ petitioner filed the contempt petition being CPAN 44 of 2018. In the said contempt petition on 3rd August, 2018 an order was passed directing the Inspector General of Registration, West Bengal to immediately value the property in question upon hearing the respondents/writ petitioners and the Government by a short reasoned order within two weeks from communication of the said order. It appears that the said order was passed for the purpose of complying with the order dated 31st July, 2017.

5. The Inspector General of Registration & Commissioner of Stamp Revenue, West Bengal by his order dated 28th August, 2018 assessed the market value of the land measuring an area 0.3834 acres in RS plot No.81 of Mouza-Howrah, JL No.1 corresponding to municipal premises No.27 Nityadhan Mukherjee Road under Howrah Municipal Corporation (hereinafter referred to as the said land).

6. The said land was proposed to be purchased by the appellant No.1 and agreed to be sold by the respondent/ writ petitioner No.1 on the terms recorded in the order dated 31st July, 2017 which was passed at the invitation of the appellants. On a reading of the orders referred to hereinabove, the appellant No.1 was obliged to purchase the said land measuring about 0.3834 acres at least at a valuation of Rs.10,17,19,640/- in as much as the valuation was made at the instance of the appellants and the appellants did not prefer any appeal from the order dated 31st July, 2017. An enforceable agreement between the parties in terms of the order dated 31st July, 2017 has come into operation.

7. The respondents/ writ petitioners on or about 5th October, 2018 took out an application taking exception to the order dated 28th October, 2018 passed by the Inspector General of Registration & Commissioner of Stamp Revenue, West Bengal. In the said application, the respondent/writ petitioner alleged that the valuation of the said land according to ARA-1, Kolkata pursuant to a query dated 22nd August, 2017 was stated to be Rs.15,39,52,543/-. Just prior to the hearing before the Inspector General of Registration & Commissioner of Stamp Revenue, West Bengal, the respondents/writ petitioners made a further query before ARA-1, Kolkata and obtained a valuation of the said land to be Rs.18,47,43,017/-

as the then market value of the said plot of land measuring about 0.3834 acres. According to respondent/writ petitioner, all these documents were placed before the Inspector General of Registration & Commissioner of Stamp Revenue, West Bengal but the said Inspector General without assessing the market value on the basis of such valuations obtained from ARA-1, Kolkata proceeded to apply the cost inflation index of the Income Tax Department vide notification No.SO1790(e) no.N.44/2017 dated 5th June, 2017 and arrived at the market value of the said land at Rs.10,17,19,640/-.

8. By a further order dated 4th January, 2019 passed in the contempt petition, the Inspector General of Registration & Commissioner of Stamp Revenue, West Bengal was directed to furnish a short reason as to why the cost inflation index published by the Income Tax Department, Government of India by the notification dated 5th June, 2017 was absolutely relevant for the purpose of determining the value of the said land while passing the order dated 28th August, 2018. It was also directed that, if, the Inspector General had departed from any previous mode of valuation adopted by the department he will also furnish short reasons for the same. The reasons were directed to be filed in the form of an affidavit to be filed by 22nd January, 2019.

9. The Inspector General of Registration & Commissioner of Stamp Revenue, West Bengal on or about 29th January, 2019 filed his affidavit wherein he has inter alia stated that Computerization of Registration of Documents (in short CORD) was implemented in the year 2007. The sale data prior to implementation of the CORD is not available. The possession of the said land was taken prior to 2002. So he has adopted the Cost Inflation Index. However, the fact remains that prior to implementation of CORD the details of different types of documents registered were maintained in physical form in different Books maintained under the Registration Act, 1908 and as such valuation of properties in and around the said plot of land could have been obtained if so desired by Inspector General of Registration & Commissioner of Stamp Revenue, West Bengal.

10. It also appears from the record that in the contempt proceedings some alleged occupiers filed applications for being added as parties but they were not formally added but were allowed to make submissions. The records also reveal that one Rajendra Prasad Rai being a non party to the writ petition challenged the order dated 31st July, 2017 passed in the writ petition by obtaining leave to appeal claiming himself to be an occupier. The appeal was ultimately dismissed on 6th February, 2018. The relevant portion of the order dismissing the appeal being MAT 1973 of 2017 with CAN 11134 of 2017 is set out hereunder:-

"Having heard the learned advocates for the parties and upon perusing the appeal as well as the application for stay, we take notice of the fact that the appellant has initiated a civil suit, being Title Suit No.1 of 2012, before the learned Civil Judge, (Junior Division) at Howrah, against the respondent/ writ petitioner and others. The following prayers appear to have been made by the appellant, as plaintiff before the civil Court:-

"(a) a decree for declaration that the plaintiff is lawful tenant in respect of 'B' Schedule property being part of holding No.27, Nityadhan Mukherjee Road, P.S. & District - Howrah;

(b) a decree for further declaration that the defendants have no right to disturb the tenancy of the plaintiff in respect of the schedule property and dispossessing, ousting and evicting the plaintiff from the suit property otherwise than in the course of law;

(d) a decree for all cost of the suit;

(e) leave under order 2 rule 2 of C.P.C.

(f) a decree for any other relief/reliefs to which the plaintiff is entitled to in law and equity."

At the time of hearing of the matter it appears from the submissions made on behalf of the parties that .3834 acres of the subject land is in possession of the Government. This admitted position has taken note of by the learned Single Judge at the very outset in the impugned judgment and order. However, the appellant has sought to raise a contention with regard to 'B' Schedule property, being part of holding no.27, situated in Nityadhan Mukherjee Road, P.S. & District - Howrah - the subject matter of the civil proceeding pending before the learned Civil Judge, (Junior Division) at Howrah. According to the appellant, the said 'B' Schedule property is part of the subject land, being .3834 acres that was taken into consideration by the learned Single Judge. The learned Single Judge had noted that, admittedly, the said land was in possession of the Government. However, this stand has been specifically denied and disputed by the respondent/writ petitioner on whose behalf it has been submitted that the 'B' Schedule property as referred to in the plaint by the appellant has nothing to do with .3834 acres, being the subject land which was taken note of by the learned Single Judge.

We do not consider it necessary to enter into the controversy at all since any observation made by us is likely to cause prejudice to the rights of the parties in respect of the civil proceedings pending before the learned Civil Judge, (Junior Division) at Howrah. We simply make it clear that nothing contained in the order dated 31st July, 2017 passed by the learned Single Judge in WP 8047 (W) of 2014 shall cause prejudice to the rights either the appellant or the respondent/writ petitioner or any of the parties to the civil proceeding, being Title Suit No.1 of 2012 pending before the learned Civil Judge, (Junior Division) at Howrah. We also make it clear that the impugned judgment and order shall in no manner curtail the statutory rights, if any, of the appellant.

The appeal and the application for stay stand disposed of accordingly".

11. On a plain reading of the said order, it will appear that the respondent/writ petitioner submitted that the "B schedule property as referred in the plaint" filed in title suit No.1 of 2012 pending before the learned Civil Judge, Junior Division

at Howrah had nothing to do with the said land measuring 0.3834 acres.

12. On a reading of the prayers made in the writ petition and order dated 31st July, 2017 it will appear that the said land measuring about 0.3834 acres is a part of a bigger plot of land measuring about 0.61 acres being premises No.27 Nityadhan Mukherjee Road, Howrah - 71101 pertaining to Mouza- Howrah Dag No.81(P) and 84 (P). This is also apparent from the order dated 31st July, 2017 wherein 0.3834 acres of land on the submission of the appellant was recorded to be in the possession of the appellant. There remained a balance portion after 0.3834 acres as recorded in the said order dated 31st July, 2017, in respect of which the Government was to issue a written confirmation that the same is not in their possession and the respondent/writ petitioner could take such steps as may be available in law to them to obtain possession of such balance portion, if they are so entitled to.

13. The contempt petition came up for final hearing on 5th April, 2019 when the same was also disposed of. It will appear from the order dated 5th April, 2019 being the order impugned that the respondent/writ petitioner made the following submissions:-

"Further to this order on 28th August, 2018, the Inspector General of Registration, West Bengal determined the market value to be 10,17,19,640/- . This is not accepted by the petitioner. They say that the valuation made by the Registrar of Assurance at Rs. 16,59,05,669 is the correct valuation.

Mr. Mitra, learned Senior Advocate appearing for the petitioner submits that his client is not raising any dispute in this Court with regard to the valuation. They seek to resolve this issue in an appropriate forum. He says that the alleged contemnor is duty bound to execute the conveyance at for a consideration of Rs. 10,17,19,640/- and make payment of the balance consideration".

14. The State on the other hand submitted the following:-

"Mr. Siddique, learned counsel appearing for the States submits that they are willing to take the conveyance from the writ petitioner upon payment of the said balance consideration but could not do so because of the intervention and interference of the alleged occupiers".

15. The alleged occupiers wanted to have themselves added as parties and further submitted that they are entitled to claim compensation against the Government which have not been paid to them. Unless the compensation is paid, the property cannot be sold.

16. Considering the submissions made by the appearing parties, the learned Single Judge passed the following order, the relevant portion whereof is set out hereunder:-

"This Court is concerned with the interpretation and compliance of the order dated 31st July, 2017.

My observation is that the said order is a plain and simple order which directs the petitioner to sell the subject property to the Government at the value determined by the Inspector General of Registration, West Bengal after demarcation etc.

There is no condition in the said order that the conveyance has to be made free from encumbrances. Neither is there any stipulation that the conveyance has to be made subject to encumbrance.

Learned Counsel for the alleged occupiers submits that they are entitled to claim compensation against the Government which have not been paid to them and that unless that is paid the property cannot be sold.

My view is that any alleged dispute between the vendor or buyer with alleged occupiers has nothing to do with the order passed by the Court.

It was an admitted position that the vendor/writ petitioner had the right to sell the property and on that basis the said order was passed. The intervenors have been unable to show that the writ petitioner does not possess such a right. They have no right to intervene in this proceeding.

The said order dated 31st July, 2017 has to be complied with.

This Court has not gone into the rights and contentions which were and are not before it. Those rights and contentions are kept open to be determined elsewhere.

I direct the State Authorities that the subject conveyance be immediately executed and registered concurrently with the receipt of the balance consideration by the writ petitioner within 30th June, 2019.

All other formalities like preparation and tender of the draft conveyance etc. by the State to the writ petitioner should be completed by 10th June, 2019.

So that final conveyance can be done by the parties and registered by the stipulated date by 30th June, 2019.

The petitioner shall appropriate the said sum of Rs. 3,28,75,453/-along with interest accrued thereon from their account with Punjab National Bank, Part Street Branch, Kolkata as part consideration.

This Court makes it clear that it is not taking any steps in contempt in the condition that the alleged contemnors comply with the said order dated 31st July, 2017, in the manner stated above.

The contempt application (CPAN 44 of 2018) is disposed of.

The applications (CAN 9252 of 2018) and (CAN 9251 of 2018) are dismissed".

17. Before us, the appellants submit that by the order dated 5th April, 2019, the learned Single Judge has modified the order dated 31st July, 2017. This according to the appellant is not permissible. Having done so, the learned Judge

erred in law. To elucidate point, the appellants further submit that in the conveyance it is always stated whether the transfer is with or without encumbrance. Since there are several claims made on behalf of the alleged occupiers, the said land measuring about 0.3834 acres cannot be said to be free from encumbrance. The State (appellant) after paying Rs.10,17,19,640/- may be saddled with further liability if it has to again pay compensation to the occupiers. Unless it is stated in the conveyance that the said land is subject to encumbrance, it will be harsh and inconvenient on behalf of the state to purchase the said land and pay the balance sum though they are willing to buy the said land. The writ petition, on the other hand, submits that the said land measuring 0.3834 acres was not in any manner encumbered when State took possession of the same in 2001. The State took possession of an unencumbered piece of land. This is also apparent from the submission made by the State as recorded in the order dated 31st July, 2017. The State submitted that it was in possession of the said land measuring 0.3834 acres and was willing to buy the same at a price fixed by the Inspector General of Registration & Commissioner of Stamp Revenue, West Bengal. The State never submitted that they are not in actual possession of the said land measuring 0.3834 acres and were in possession through some occupiers. Assuming without admitting that the land has been encumbered, the same has been after the State has taken possession of the land because the claims of the occupiers in all cases are after 2003 when the State was in possession and as such the respondent/writ petitioner cannot be blamed.

18. On behalf of the respondent/writ petitioner, it is further submitted that there is a shift in stand on behalf of the appellants which is apparent in the order dated 5th April, 2019. This was made in a desperate attempt to avoid the rigours of contempt and is not the actual situation. It is further submitted on behalf of the respondents/writ petitioners that in the event, the appellants insist on an indemnification from the respondent/writ petitioner though the same is not required as and by way of abundant caution it may be recorded in the conveyance that the said land measuring 0.3834 acres was not encumbered prior to the State taking over possession.

19. After considering the materials on record, various orders passed in the writ petition as well in the contempt proceedings including the impugned order we find that the learned Single Judge did not modify or vary the order dated 31st July, 2019 in contempt jurisdiction by passing the order dated 5th April, 2019. On the contrary, we are of the view that after having not preferred an appeal from the order dated 31st July, 2019, the appellants are now trying to assail the said order in the instant appeal which arises out of an order dated 5th April, 2019 passed in contempt jurisdiction. The learned Single Judge has rightly recorded that the interveners have been unable to show that the respondent/writ petitioner does not possess the right to sell the said land measuring about 0.3834 acres. As there was no dispute as to 0.3834 acres of land and any dispute as to the balance portion of land either with the respondents/writ petitioners or with the appellants is in no way connected with 0.3834 acres of

land, it has also been rightly observed by the learned Single Judge that the dispute between the vendor or buyer with the alleged occupiers has nothing to do with the order passed by the Court.

20. The other alleged occupier being one Rajendra Prasad Rai is found to be unsuccessful till the appellate stage while challenging the order dated 31st July, 2017. The appellants have admitted to be in possession without any qualification as to their possession as recorded in the order dated 31st July, 2019. No document has surfaced in the contempt proceeding wherefrom it may even prima facie appear that any part or portion of the said land measuring about 0.3834 acres was occupied at the time the appellants took possession of the same. The allegation of the appellants as recorded in the order dated 5th April, 2019 is a submission from the bar. The allegation is a submission without producing any document to show that the said 0.3834 acres of land is occupied in any manner whatsoever. Moreover, a long period of time has expired from the time when the possession of the land was taken and when the conveyance was directed to be executed. In that view of the matter, it cannot be said that the said land measuring 0.3834 acres area is encumbered. Furthermore, in view of the offer by the appellants and the acceptance by the respondents/ writ petitioners as recorded in the order dated 31st July, 2017 an agreement has come into existence. The appellants cannot resile out of the same at this stage. It is correct that when a land is sold/ transferred/conveyed it is described whether the same is encumbered or unencumbered in the deed. In the instant case in view of the discussion made hereinabove we find that the said land measuring about 0.3834 acres was unencumbered in 2001 when the same was taken possession of by the appellants. However, in view of the submission made on behalf of the respondents/writ petitioners, the appellant in the conveyance/ sale deed may include that the respondents/writ petitioners will keep the appellants save and harmless and indemnify the appellants against any future claim as to the said land measuring about 0.3834 acres that may arise during the period prior to the taking of the possession of the said land by the appellants.

21. In the facts and circumstances as aforesaid, we direct execution and registration of the conveyance by the appellants positively within a period of three months from date in accordance with the orders dated 31st July, 2017 and 5th April, 2019, subject to the observation as to indemnification as made hereinabove, if the appellants so chose to include. The appellants shall simultaneously with the execution and registration of the conveyance make over the sum payable to the respondents/writ petitioners being the balance of Rs.10,17,19,640/-and the sum already paid or lying deposited with the respondents/writ petitioners.

22. The appeal and the connected applications are disposed of accordingly. There shall, however, be no order as to cost.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis.