
(2011) 05 CAL CK 0119

In the Calcutta High Court

Case No : A.P.O. No. 6 of 2010; G.A. No. 502 of 2010; W.P. No. 416 of 2009

State of West Bengal

APPELLANT

Vs

Electro Infotech Pvt. Ltd.

RESPONDENT

Date of Decision : 19-05-2011

Acts Referred:

Companies Act, 1913 — Section 263
Companies Act, 1956 — Section 394, 575
Transfer of Property Act, 1882 — Section 123, 54

Citation : (2011) 3 CHN 537

Hon'ble Judges : Pratap Kumar Ray, J; Harish Tandon, J

Bench : Division Bench

Advocate : Ritwik Pattanayak, for the Appellant; A. K. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Kumar Ray, J.—Heard the learned Advocate appearing for the parties.

2. Subject-matter of lis is on central point as to whether the State Government who is lessor of concerned land could make lessee, a partnership firm, liable for alleged breach of Clause 2(8) of the Indenture of Lease dated 17th July, 2002, alleging that Lessee assigned or transferred the demised land or any part of the demised land without previous permission of the Government in writing due to its action of reconstitution of partnership firm by taking new five partners and thereafter registration of the said firm to a incorporated Company under Part IX of the Companies Act, 1956 wherein a provision u/s 575 lead an effect of vesting of all property movable and immovable belonging to or vested to the partnership firm on the date of registration to the incorporated Company due to language of said provision that all property will pass to and vest in the Company incorporated under the Companies Act and for such alleged breach whether State Government is legally entitled to issue the letter dated 21st January, 2009 impugned in the writ application asking the incorporated Company to pay penalty @ Rs. 3 lacs per

katha in addition to permission fee of Rs. 3 lacs per katha, total Rs. 6 lacs per katha, to regularise said alleged transfer of leasehold property to the Company incorporated by way of post-facto regularisation in terms of regularisation notification dated 6th May, 2008 issued by the Principal Secretary to the Government of West Bengal, Urban Development Department and the question whether the State Government unilaterally can change the terms and conditions of lease deed asking penalty and permission fee in the manner aforesaid on the alleged breach of terms of agreement though in the event of prove of alleged breach, State Government Lessor was legally entitled under the said Indenture of Lease to exercise right of preemption only by determining the lease which admittedly has not been done by the State Government in terms of clause 4 of the Indenture of Lease.

3. The issue has been answered by the learned Trial Judge in the writ application W. P. No. 416 of 2009 by the order dated 11th September, 2009 in favour of the writ petitioner, the incorporated Company, by setting aside the impugned decision that is the said letter and passed an order directing State respondents to mutate name of said Company in all records, concerning the leasehold plot, as lessee without asking to pay any charge or fee other than the fee payable just for mutating the records within the period specified in the said order.

4. Assailing the said order dated 11th September, 2009 passed in the writ application, the State of West Bengal and one Principal Secretary of Urban Development Department, Government of West Bengal as appellants, have preferred this appeal.

5. It was the case made out by the writ petitioner in the writ application that a partnership firm in the name of "E. P. Associates" was established by partnership agreement dated 1st April, 1993 in between two partners Sukanta Bhattacharjee and Soma Bhattacharjee to run the business of manufacturing of environmental pollution control equipment, sound intensify doctor, PVC corrugated sheets etc. in co-partnership. By registered Deed of Lease dated 17th July, 2002, State Government as lessor, granted lease to the said partnership firm, a plot of land, measuring more or less 9 Kathas, at Salt Lake City, Kolkata to run the said business by partnership firm. On 7th March, this partnership firm constituted with two members, was re-constituted by adding new five partners and it became a partnership firm of seven partners. On 29th June, 2007 this partnership firm being unincorporated Company, under provisions of laws under Part IX of the Companies Act, applied for registration as private limited Company in the name and style M/s. Electro Infotech Pvt. Ltd. The Registrar of Company issued registration number following the procedure of law laid down in Part IX of the Companies Act. Said incorporated Company filed an application on 10th August, 2007 for mutation of name of the incorporated Company in the records of State Government as lessee of said leasehold property. Reminder letter to act, was filed on 4th November, 2008. Ultimately on 21st January, 2009 a letter was issued by one Officer-on-Special Duty & Ex-officio Deputy Secretary to the

Government of West Bengal asking the said incorporated Company to deposit penalty and permission fee at the rate of Rs. 6 lacs per katha to effect mutation. This letter was impugned in the writ application seeking the following reliefs:-

- a) A writ of and/or in the nature of Mandamus directing and commanding the respondents to act in accordance with law and to record the changed status of the petitioner over and in respect of the land being plot of land measuring 8.9816 cottahs at Premises No. AQ-17, Sector- V, Salt Lake City, Kolkata in such time and manner as may be permitted by the said Hon''ble Court;
- b) A writ of and/or in the nature of Certiorari directing and commanding the respondents to transmit the records relating to the case to the said Hon''ble Court after certifying the same so that conscionable justice may be administered on the basis thereof;
- c) Rule NISI in terms of prayers above;
- d) Injunction restraining the respondents, each of them, their subordinates from causing any delay or further delay in recording the change of the status of the petitioner over and in respect of the subject piece of land being plot of land measuring 8.9816 Cottahs at premises No. AQ-07, Section-V, Salt Lake City, Kolkata any further in any manner whatsoever;
- e) Injunction restraining the respondents, each of them, their subordinates from giving effect or further effect and/Or acting on the basis of the Impugned letter dated 21st January, 2009 issued by the respondent No. 3 any further in any manner whatsoever till the disposal of the application;
- f) Ad interim order In terms of prayer above;
- g) Costs of an incidental to this application be paid to the petitioners by the respondents;
- h) Such further and/or other order or orders be made and/or direction or directions be given as to this Hon''ble Court may seem just and proper.

6. It is the positive case of the writ petitioners that no terms and conditions of Indenture of Lease was breached as purportedly informed indicating breach of Clause 2(8) of Lease Deed, as lessee did not assign or transfer the demised land or any part of the demised land and/or any structure erected thereon due to the act of reconstitution of partnership firm with seven members and subsequently to incorporate it as a Company under the Companies Act in terms of provisions of law laid down in Part IX of said Act. A specific point has been taken that the properties of the partnership firm passed to and vested in the incorporated Company by application of section 575 of Companies Act and it was neither a transfer nor assignment of leasehold property to the Company.

7. Writ application was opposed by filing an affidavit-in-opposition by the respondent Nos. 2 and 3 and not by respondent No. 1 the State of West Bengal, the lessor. It is contended in the opposition that the lessee consisting of two

partners under the name and style of partnership firm M/s. E. P. Associates, breached Clause 2(8) of the Lease Deed due to assignment or transfer of demised land and/or any part of the demised land without previous permission of the Government in writing for its action of converting the partnership firm into a private limited Company and though there was a breach of terms of conditions of lease deed, Government sympathetically considered the prayer for mutation of the name of the private limited company as a lessee in terms of regularisation notification dated 6th May, 2008 issued by Urban Development Department by issuing a letter dated 21st January, 2009 asking to pay penalty and permission fee at the rate specified. Except this stand about breach of the terms of Lease Deed due to formation of private limited Company there is no other stand taken by the respondent nos. 2 and 3 on factual issue of management and control of the incorporated Company by the original partners of the partnership firm constituted with two members when lease deed was executed.

8. Having regard to the submissions of the respective parties learned Trial Judge passed judgement in favour of the writ petitioners. The judgement of the learned Trial Judge read such:

The Court: The petitioner in this writ petition dated May 11, 2009 is aggrieved by the decision of the Officer-on-Special Duty and Ex-Officio Deputy Secretary, Urban Development Department, Government of West Bengal dated January 21, 2009, Annexure P7 at P.76, directing the petitioner as follows:-

3. You are also requested to submit the following documents/papers in connection with your prayer for examination:

(i) Affidavit by the transferee company undertaking that o change of character of the land/land use pattern will be made by transferee company in subsequent stages.

(ii) Financial viability of the transferee company along with last audited balance sheet of the proposed transferee for last three years.

Please note that all that above requisite documents will have to be submitted complete in all respect and to the full satisfied of the Government. The matter will be further processed on submission of the above documents.

The decision was given in view of the application date August 10, 2007, Annexure P5 at P-71, submitted by the petitioner to the Principal to the Principal Secretary, Urban Development Department, Government of West Bengal informing the Principal Secretary about incorporation of the petitioner under provisions of the Companies Act, 1956 consequent upon conversion of a firm called "E.P. Associates" and requesting the Principal Secretary and undertaking as follows:-

4. In view of the facts and circumstances mentioned above, we request you to please note and record the change of status of the lessee of the aforesaid plot of land viz. M/s. E. P. Associates from partnership firm to company and also note

the consequent change of name of the lessee firm from M/s. E. P. Associates to Electro Infotech Private Limited on this incorporation under the Companies Act, 1956 as mentioned above.

5. If any fees and/or charges are required to be paid for recording the above we agree and undertake to pay the same on receiving the intimation from your in this regard.

The partners in the firm, E.P. Associates, executed an instrument dated June 13, 1984, Annexure P1 at P-26, under which they entered into a partnership. By executing an instrument dated July 17, 2002, Annexure P2 at P-46, the State of West Bengal leased out to the firm land measuring 8.9816 cottahs in plot No. 7 at Block AQ of Sector V of Bidhannagar (Salt Lake City) to enable the firm to erect a building thereon for the use for manufacturing of Electronic Indicating Turbidity Meter. The partners in the firm entered into a memorandum of Association dated May 25, 2007, Annexure P-9 and P.8 of S.A., deciding to convert the firm "into a Joint Stock Company as a going concern and to register the same under Part IX of the Companies Act, 1956 in the name of Electro Infotech Private Limited." It was noted in the memorandum of Association that the "Deed of Partnership" conferred, inter alia, an option on the parties to get the "partnership registered under any enactments of statutes for the time being in force including registration under Part IX of the Companies Act 1956 if considered expedient by them in the best interests of the business", and that "in pursuance of such option" the partners, in a meeting held on March 31, 2007, had unanimously resolved that the business of the firm carried on under the name and style of "E. P. Associates" would be converted into a joint Stock Company as a going concern.

Thereupon necessary application was made to the Registrar of Companies, West Bengal for registration of the company under Part IX of the Companies Act, 1956 and after registration of the company the Registrar of Companies issued a certificate of incorporation dated June 29, 2007, Annexure P-9 at P-9 of S.A. Under the circumstances, the petitioner submitted the application dated August 10, 2007 requesting the Principal Secretary, Urban Development Department, Govt. of West Bengal to substitute the petitioner for the firm in the records of the government pertaining to the lease of the plot. By the impugned decision the authority concerned informed the petitioner that steps for substituting the petitioner for the firm would be taken provided it complied with the conditions mentioned in the decision. The authority giving the impugned decision has proceeded on the basis that the firm sought to Government's permission to transfer the leasehold of its plot to a newly formed and registered company within the meaning of the Companies Act, 1956 and hence an independent legal entity. In the application dated August 10, 2007 the petitioner stated all necessary facts and mentioned all relevant provisions including the provisions of section 575 of the Companies Act, 1956 in support of its case that the conversion of the firm into a company did not amount to transfer of the leasehold of its plot

by the firm to the company, but that the leasehold stood automatically vested in the company by operation of the provision of section 575 of the Companies Act, 1956. The authority giving the decision totally ignored this aspect of the matter, and on the contrary came to conclusion that the conversion of the firm, into a company amounted to transfer of the leasehold of its plot by the firm to the company. Hence the question is whether the conversion of the firm into a company has amounted to transfer of the leasehold of its plot by the firm to the company.

Relying on the provisions of section 575 of the Companies Act, 1956 and the decisions in *Rama Sundari Ray vs. Syamendra Lal Ray*, ILR (1947) 2 Cal and *Vali Pattabhirama Rao & Anr. vs. Sri Ramanuja Ginning and Rice Factory (P) Ltd. & Ors.*, AIR 176, Mr. Chowdhury, Counsel for the petitioner, has argued that the concluding that the conversion of the firm, the lessee of the plot, into a company amounted to transfer for the leasehold of its plot by the firm to the company.

On the other hand, Mr. Roy, Counsel for the respondents, has argued that in view of the terms and conditions of the instrument creating the lease, the firm could not convert itself into a company and thus indirectly transfer the leasehold of its plot, without prior permission of the government, to the company. His argument is that in fact the firm has illegally transferred the leasehold of its plot to the company; and hence, the company, seeking mutation of the records of the lease, is liable to pay the charges mentioned in the impugned decision that the government has taken just as a matter of grace.

The provisions of section 575 in part IX of the Companies Act, 1956 are as follows:-

575. Vesting of property on registration.-- All property, movable and immovable (including actionable claims) belonging to or vested in a company at the date of its registration in pursuance of this Part, shall on such registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

It is, therefore, evident that all movable and immovable properties belonging to or vested in a company at the date of its registration in pursuance of Part IX of the Companies Act, 1956. Whether in such a case the passing of the properties to the company incorporated under the Companies Act, 1956 amounts to transfer of the properties by the firm that on conversion became a company was one of the questions that arose for consideration in *Rama Sundari Ray vs. Syamendra Lala Ray*, ILR (1947) Cal. 1 decided by a single bench of this Court on January 4, 1940 *Rama Sundari* was decided on the basis of section 263 in Part VIII of the Indian Companies Act, 1913. The said section 263 was as follows:-

263. Vesting of property on, registration. -- All property and immovable including all interests and rights in, to and out of property, movable and immovable, and including obligations and actionable claims as may be belong to or be vested in a company at the date of its registration in pursuance of this Part, shall, on

registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

In Rams Sundari his Lordship (Panckridge, J.) noted and held (p.9) as follows :-

it is next argued that if there were pre-existing partnerships and if the partnerships owned the immovable properties set out in the two schedule, those properties have never vested in the companies.

The plaintiff argues that there has either been a sale or a gift, and that, as the subject matter is immovable property, a registered instrument is required by section 54 or section 123 of the Transfer of Property Act. As the case may be.

To this argument, section 263 of the Indian Companies Act seems to furnish a conclusive answer. That section provides that all property moveable and immovable, as may belong to or be vested in a company, on the date of its registration in pursuance of Part VIII, shall on registration, pass to and vest in the company as incorporated under the Act for all the estate and interest of the company therein.

It will be observed that the section is mandatory and does not require the statutory transfer provided thereby to be accompanied by a registered document.

In Vali Pattabhirama Rao & Anr. vs. Ramanuja Ginning and Rice Factory (P) Ltd. & Ors., AIR 1984 176 , a Division Bench of the Andhra Pradesh High Court held and said (para 18) as follows:-

...Thus we hold that if the constitution of the partnership firm is changed into that of a company by registering it under this Part 9 of present Act (Part 8 of previous Act) there shall be statutory vesting of title of all the property of the previous firm in the newly incorporated company without any need of a separate conveyance. A similar view was taken in Rama Sundari Ray vs. Syamendra Lal Ray, IR 1947(2) Cal 1.

I am therefore, of the view that the authority giving the decision was wrong in concluding (1) that conversion of the firm into a company amounted to transfer of the firm's right, title and interest in the plot to the company and (ii) that hence the company could be given the benefit of mutation of the relevant records substituting it as the lessee for the firm provided it paid the amounts mentioned in the decision and complied with the formalities.

It is not the case that the firm merged into an already existing company registered under Part IX of the Companies Act, 1956. It is evident from the materials produced with the writ petition, especially the memorandum of association considering which the Registrar of Companies, West Bengal registered the company under Part IX of the Companies Act, 1956, that it came into existence on conversion of the firm, "E.P. Associates", into a joint stock company limited by shares. Hence in view of the provisions of section 575 of the Companies Act, 1956 all properties, moveable and immovable belong to or

vested in the firm at the date of its registration in pursuance of Part IX of the Companies Act, 1956 passed to and vested in the petitioner by operation of law. Nothing in the whole transaction amounted to a transfer of the leasehold of its plot by the firm to the company. Accordingly, the petitioner was fully justified in submitting the application dated August 10, 2007 requesting the government to substitute it as the lessee for "E. P. Associates, the firm, to whom the plot in question was leased out by the government. For mutating the records incorporating name of the petitioner as the lessee of the plot, the respondents could not ask the petitioner to pay any charge or fee other than the fee, if any, payable just for taking steps to mutate the records. Therefore, the impugned decision cannot be sustained.

For these reasons, I allow the writ petition, set aside the impugned decision and order that the respondents shall mutate all records concerning the lease of the plot substituting therein the petitioner's name as the lessee for that of "E. P. Associates", the lessee named in the instrument dated July 17, 2002, Annexure P-2, Annexure P-2 at p.46, creating the lease; and that for mutating the records the respondents shall not ask the petitioner to pay any charge or fee other than the fee payable just for mutating the records. Steps for mutating the records shall be taken immediately and the process shall be completed within four weeks from the date of communication of this order to the Principal Secretary, Urban Development Department, Government of West Bengal. There shall be no order for costs. Urgent certified xerox of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the department concern.

9. This appeal has been preferred assailing the said judgement by State of West Bengal and another, the Principal Secretary of concerned department of State of West Bengal who however, contested the writ application by filing opposition. Very surprisingly the respondent No. 3 of the writ application the Officer-on-Special Duty & Ex-Officio Deputy Secretary to the Department of Urban Development, Government of West Bengal has been made as proforma respondent in the appeal and he is not the appellant, though appellant No. 2 the Principal Secretary and the proforma respondent No. 3 of the appeal, jointly filed affidavit-in-opposition of writ application. It is the ground taken in the memo of appeal that the conversion of partnership firm to a joint stock company was not done by original partnership firm but a re-constituted partnership firm dated 7th march, 2007 wherein five strangers were inducted who were not original partners of the partnership deed when leasehold property was granted in favour of the said firm, without prior permission of the Government in violation of the condition of lease deed and conversion of the said firm as a private limited Company without permission of the Government, the lessor, tantamounts to assignment/transfer of leasehold property in favour of Company. That learned Trial Judge failed to apply section 575 of the Companies Act in its proper perspective. The findings of the learned Trial Judge has been attacked by contending, inter alia, that though it was a case of transfer/assignment/ of lease

hold property, but learned Trial Judge quashed the regularisation letter on misinterpretation of section 575 of Companies Act.

10. In course of argument the respondent company contended that conversion of re-constituted partnership firm to a limited Company is permissible under Part IX of Companies Act and u/s 575 of said Act vesting of property on registration to incorporated Company is not alike of vesting of property due to amalgamation of Company u/s 394 of said Act.

11. By comparative analysis of said sections 394 & 575 of the Companies Act, it is contended that meaning of the word under sub-section (2) of section 394 whereby it is provided that on passing of amalgamation order the property shall be transferred to and vest is not the situation u/s 575 of said Act due to language used in section 575 of the Companies Act wherein the property will pass to and vest, in the incorporated Company, as soon as unincorporated Company is registered under the Part IX of the Companies Act. It is contended that the using of the words "pass to" and "transfer", in the two respective sections, has different connotation and meaning, so far as its application.

12. Learned Advocate of the respondents/writ petitioner pressed much stress on the language "pass to" and "vest" used in section 575 of the Companies Act, to submit that it is not a transfer but transmission of property by automatic process by application of said statutory provision from one unincorporated Company which also includes a partnership firm, to an incorporated Company, as soon as registration is allowed. It is further contended that there is a gulf of difference in the meaning of the words "transferred to and vest" when two Companies are amalgamated by an order u/s 394 of the Companies Act in view of use of the words "transfer to and vest" in sub-section (2) of the said section.

13. Learned Advocate for the respondents/writ petitioners has further submitted that due to re-constitution of partnership firm originally constituted with two partners by taking five new partners by any stretch of imagination could be said that there was transfer/assignment/sub-letting of the leasehold property on breach of Clause 2(8) of the lease deed. Similarly, when unincorporated Company, in the instant case the partnership firm, became an incorporated Company, by application of statutory provision under Part IX of the Company Act, on application of section 575 of said Act, the property passed to incorporated Company and it was not a transfer or assignment of the leasehold property on breach of Clause 2(8). It has been further contended that the amount as fixed for regularisation is not legally acceptable due to unilateral action of State Government introducing new terms and conditions which is not incorporated in the Lease Deed.

14. Learned Advocate for the respondents/writ petitioners relied upon various judgements about application of section 575 of the Companies Act and its statutory impact.

15. Having regard to the rival contention of the parties and on perusal of the

respective affidavits filed by the appellants and the writ petitioners/ respondents before the learned Trial Judge by way of affidavit-in-opposition and writ application respectively and having regard to memorandum of appeal and respective affidavits filed in appeal Court, the following points emerge for adjudication:-

1) What is the nature of the letter dated 21st January, 2009 impugned in the writ application on the reflection of the terms and conditions of the Lease Deed?

2) Is the letter dated 21st January, 2009 is a fresh offer relating to leasehold property, to the writ petitioners, the incorporated Company, for their acceptance of the conditions of regularisation alleging breach of terms and conditions of Lease Deed for the purpose of renewal of lease by inclusion of the said terms of regularisation in the original lease deed and if it is so, whether writ is maintainable in that perspective?

3) Having regard to the respective affidavits filed by the parties in the Court below and before us in the appeal Court and the questions raised by them when it goes to the issue of adjudicatory contour for an answer whether partnership firm breached the condition of lease deed aforesaid particularly Clause 2(8), the writ Court whether will exercise its power of judicial review on the basis of affidavit evidence only when in adjudicating the point other material evidences are required to be considered relating to control, management of the re-constituted firm and the incorporated company and other co-related points which are within the factual parameters requires to be brought in evidence by taking deposition of the respective parties as is done by the Competent Civil Court in adjudicating civil dispute.

4) Whether the writ Court will venture to interpret the language used in section 575 about automatic vesting of the property to incorporated Company on comparative analysis of the provision of section 394 of the Companies Act applicable for transfer of property to the amalgamated company in the case of amalgamation order at a point when except the issuance of a letter of 21st January, 2009 the lessor has not exercised any other power under the lease deed either determining the lease and its other remedies including right of pre-emption etc. as per deed on scanty materials of affidavit evidence as filed by the parties.

Said points are answered as follows:-

Point No. 1:

1) The nature of the letter dated 21st January, 2009 is nothing but a new offer to the writ petitioners the incorporated Company even if there is an allegation made about breach of Clause 2(8) of the Lease Deed by the lessor, the State of West Bengal. This offer may be accepted, may not be accepted, by the writ petitioner as per his desire.

Point No. 2:

2) Having regard to the terms and conditions of the lease deed it is explicit that the regularisation of breach, if any, of terms and conditions of the lease deed, as a curative measure was not included in the lease deed and the lessor unilaterally cannot incorporate the same in the lease deed without consent of the lessee. This letter accordingly could be considered as a fresh offer of the lessor to the incorporated Company for their acceptance so that renewal of lease could be made in terms of regularisation notification. This point get support from the judgement of the Apex Court passed in the case Delhi Development Authority Vs. Durga Chand Kaushish,

Point No. 3:

3) So far as point No. 3 is concerned the adjudicatory field of the writ Court as has been decided by several judgements of the Apex Court, one of such is the case of The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, , is solely on the basis of affidavit evidence. A litigation before the civil Court is adjudicated on the basis of trial on evidence by taking deposition of the witnesses concern on factual points and other documentary evidence. The Writ Court decides the issue on affidavit evidence and seldom takes deposition of the witness to adjudicate the matter. It is settled legal position of law that when there is a disputed question of fact, as in the instant case alleged breach of Clause 2(8) of the lease deed, the writ Court will not venture to adjudicate the same disputed question of fact and it should be done by the competent Civil Court. It is settled legal proposition that disputed question of fact, writ application is not entertainable. Reliance is placed to the judgement passed in the case Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., which was subsequently relied upon in the case Rourkela Shramik Sangh Vs. Steel Authority of India Ltd. and Another, . In the writ application letter dated 21st January, 2009 has been assailed on the premise that due to conversion of partnership firm to an incorporated Company there was no breach of Clause 2(8) of the lease deed which stipulates an embargo restraining the lessee to transfer, assign the leasehold property without consent of the lessor. Breach of said clause permits the lessor to determine the lease and to enter into leasehold property and may claim right of preemption. On scanning the lease deed, it appears that even if there is any breach, the lessor immediately will not enter into the leasehold property, but will allow the lessee to cure the breach within the period stipulated and thereafter lessor is at liberty to take steps as per the lease deed. Hence, to adjudicate the prayer made in the writ application being prayer (a) wherein a mandamus has been sought for to record the change of status of the petitioner over the leasehold property and the injunction as sought for in prayer (d) & (e) restraining effect of the letter dated 21st January, 2009, could not be considered until and unless the Court is satisfied on the factual dispute that due to reconstitution of the firm and thereafter incorporation of the same as incorporated Company, the lessee breached Clause 2(8) of the lease deed namely transfer and assignment of the leasehold property. This determination zone/area is absolutely within the factual

parameters and it could be done by the competent Civil Court, if such occasion arises, by considering all materials as to be placed by the respective parties. Only on the basis affidavit evidence in the writ Court, it is not desirable to enter into that area of adjudication to answer whether partnership firm breached the terms and conditions of the lease deed. Without adjudication of factual disputes about alleged breach of terms and conditions of the lease deed, the legal justification of the letter dated 21st January, 2009 cannot be dealt with and unless that legal justification is arrived at, prayer of the writ application is not possible to be allowed. In a nutshell, it appears that both parties practically have invited this writ Court to adjudicate a civil litigation arising out of lease deed and alleged breach thereof. The breach as alleged could not be dealt with and considered without sufficient materials/evidence before us and more preciously without taking oral evidence of the parties on that score as in adjudicating the issue we have to deal with the issue as to whether control and management of the incorporated company or before that of the reconstituted partnership firm is/ was absolutely within the hand of the original partners of the partnership firm consisting of two partners only when lease deed was executed. Having regard to such we are of the view that writ Court will not venture to consider that issue.

Point No. 4:

4) So far as point No. 4 is concerned, as has been considered by the learned Trial Judge, we are of the view that such consideration is premature, until and unless the factual disputes of alleged breach of Clause 2(8) relating to transfer and assignment of leasehold property is answered and dealt with properly. The interpretation of the word "passed to" and "vest" is dependent upon identification of right of the lessor on leasehold property which is in the nature of reversion. It is a settled proposition of law that lessor by lease instrument only permits lessee to enjoy the leasehold property by parting with possession of the property in question, but the title of the property remains with the lessor and by efflux of time, if time is stipulated in the lease deed, or for any other contingency, the possession of the property comes back in the hand of lessor. In such a situation of the conceptual idea of the lease vis a vis the leasehold property, the meaning of the word property appearing in section 575 of Companies Act is required to be analysed in the angle of a lessor also about his say in the leasehold property when an unincorporated Company, in the instant case the partnership firm, intends to be incorporated under the Companies Act. That issue at the present moment is premature as the lessor as yet has not determined the lease, but simply has expressed its desire by a new offer to an incorporated Company to accept him as a lessee, on fulfillment of certain terms and conditions as mentioned in the offer letter dated 21st January, 2009. Hence, findings of the learned Trial Judge in that concept and in that field was not justified. Against an offer, writ is not maintainable.

16. Having regard to the aforesaid answers to the points, we are of the view that the letter dated 21st January, 2009 is nothing but a fresh offer by the lessor to

incorporated Company who is at liberty to accept it or not to accept it since lease as yet has not been determined. In the event of such acceptance, the lessor may renew the lease with fresh terms and conditions. As the impugned letter is nothing but an offer writ application is not maintainable assailing the offer letter for our adjudication on disputed question of fact of alleged breach of terms and conditions of lease deed.

17. Considering the aforesaid findings and observation above writ application accordingly was not maintainable. Impugned judgement and order passed by the learned Trial Judge and the findings thereof accordingly are set aside and quashed. The appeal is allowed to that extent and writ application stand dismissed.

LATER:

Having regard to the aforesaid finding, there is no need to decide the GA No. 502/2010, this also stands disposed of.

I agree.