(1985) 09 GAU CK 0003

In the Gauhati High Court

Case No : Civil Rule No. 850 of 1985

Steelsworth (Pvt.) Ltd. and Another APPELLANT

Vs

The Gauhati University and Others RESPONDENT

Date of Decision : 27-09-1985

Acts Referred:
Constitution of India, 1950 — Article 14, 19, 226, 298

Citation : (1985) 2 GLR 452

Hon'ble Judges : K. Lahiri, Acting C.J.;K.N. Saikia, J

Bench : Division Bench

Advocate : G.K. Talukdar and B. Agarwal, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

K. Lahiri, A.C.J.

1. This is an application under Article 226 of the Constitution of India for writ in the nature of Mandamus and/or certiorari against Gauhati University, Respondent No. 2, Registrar, Gauhati University invited tenders for the construction Science Block No. V (Zoology and Agri-Botany) in the University Campus, The Petitioner company submitted a tender which was accepted by the Respondents and finally the work was allotted to the Petitioner company. The total amount of control was around 11 lakhs, however, the Respondents allotted the contract work to the extent of Rs. 7.5 lakhs initially to the Petitioner. In pursuance to the work order dated 8.12.71 an Agreement was entered into between the parties on 3.10.1972.

2. The Petitioners claim that they have completed the contract within the extended time; and that the delay by 3 days was due to intervening ''Bibu Holidays''. Due to enhancement of price of certain essential items, like cement. M.S. Round etc. the Petitioner charged enhanced rates. The Respondent have paid the entire amount but a sum of Rs. 1,88,856/- has not been paid by the Respondents, to which the Petitioners were entitled. The above amount includes

tat security money and the enhanced rates. In short, the claim of the Petitioners is that they are entitled to payment of the said amount under the terms of the contract. It is not disputed that the contract was a concluded contract. The University being the statutory authority, it has been contended by Mr. G.K. Talukdar, learned Counsel for the Petitioner, that we can issue writ in the nature of mandamus compelling them to, make the payment and/or quash the letters and orders whereby they have refused to pay the enhanced rates, etc. The Petitioners claim that they have completed the contract fully in accordance with the terms of the agreement whereas It appears that the University did not accept that position and raised- controversy as to the entitlement of the amount vide Annexue- ''F'' to the writ petition.

3. Ordinarily, where a breach of contract is complained or the party complaining of such breach may sue, for specific performance of the contract, if the contract is capable of being specifically performed, or the party may sue for damages. Such a suit would ordinarily be entertainable by the Civil Court. A right to relief flowing from a contract has to be claimed in a Court where a suit for specific performance of contract or for damages can be filed. This well settled.

4. In Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, Chandrachus, J. speaking for the Constitution Bench observed as under:

Those who contract with open eyes must accept the burdens of the contract along with its benefits. The power of the (sic) Commissioner to grant liquor licences by auction and to collect licence fees through the medium of auctions can not by writ petition be questioned by those who had their venture succeeded, would have relied upon those very powers to found a legal claim. Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon wheterms of the contract. By such a test no contract could ever have a binding force.

Further, there is n pertinent observation which we extract:

Analysing the situation here, a concluded contract must be held to have come into existence between the parties. The Appellants have displayed ingenuity in their search fop invalidate circumstance but a writ petition is not an appropriate remedy form impeaching contractual obligation.

5. In Woodcrafts Assan. v. Chief Conservator, Forests AIR 1971 Gau 92 a writ application was filed challenging the revision of rates of royalty for two different periods. A Division Bench of this Court rejected the petition as not maintainable. It has been held that there is violation of rights under the contract and that such violation of contractual obligation cannot be remedied by a writ petition.

6. In Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd., the right to remove member without the liability to pay royalty. It was held that the company was not enforcing its right under any provision of the statute but was seeking to enforce a contractual right under the specific terms of contract of lease agreed to

between the parties. Their Lordship relied on Woodcrafts Assam (supra), and further observed as under:

The validity of regulations is not challenged. Therefore, the demand for royalty is supported by law. What (sic) the Respondents claim is an exception that in view of a certain term in the Indenture of lease, to wit, Clause 2 the Appellant is not entitled to demand and collect royalty from the Respondent. This is nothing but enforcement of a term of contract of lease. Hence, the question whether such contractual obligation can be enforced by the High Court in Its writ jurisdiction.

Their Lordships reached the conclusion that a suit would be an appropriate remedy and the High Court bad no jurisdiction to entertain the writ petition in exercise of the power under Article 226 of the constitution, in reaching the conclusion their Lordships relied on Harshankar (supra).

7. To the same effect is decision in Radhakrishna Agarwal and Others Vs. State of Bihar and Others, The Petitions were direct against orders of the State Government revising the rate of royalty payable by the Petitioners-Appellants under a lease of 1970, and after that, canceling the lease to collect and exploit sal seeds from forest area was illegal, during the substances of the lease, and there after, the cancellation the lease itself was illegal. The main contention of the Petitioners could establish some right, either contractual or equitable, to continue in possession, the State could be prevented by appropriate proceedings, from ousting the Petitioners from the forest land from which the Petitioners had been gathering sal seeds. The Petitioners had also alleged ''malafide'' on the part of the Conservator of Fareast in enhancing the royalty unreasonably and then canceling the lease allegedly acting under the influence of friends and associates of the Forest Minister. The writ petitions raised question relating not only to action lying within the sphere regulated by the law of contract, but according to the Petitioners, by constitutional provisions relating to the exercise of the executive power of the State Government contained in Article 298. On behalf of the State it was contended that the action could only be determined by ordinary civil court and the High Court could not invoke power under Article 226 of the Constitution of India merely because there was a dispute where the agreement had been broken or not.

8. It has been hold by the Supreme Court that at the very threshold or at the time of entry into the field of consideration of persons with whom the Government would contract at all, the State no doubt acts purely in its executive capacity and it is bound by the obligation which dealings of the State with the individual citizens import into every transaction entered into exercise of its constitutional powers, But, after the State or its agents other into the field of contract, the relations are no longer governed by the Constitutional provision but the legally longer governed by the Constitutional provision but the legally valid contract which determines rithts and obligation of the parties ''inter re''. It has also been held that constitutional provision aries when the State or its agents, purporting to act within this field, perform any act. In this sphere, the parties to

the contract can only claim rights conferred upon them by contract and are bound by the terms of the contract only, unless some statute steps in, and confers contractual field which is apart from contract. It was held that it was the contract and not the executive power regulated by the Constitution, which governed the relations of the parties. It was further held that the question involved were pure and simple breach of contract and no writ or order could issue under Article 226 of the Constitution in such cases to compel the authorities to remedy such a breach of contract. Their Lordships further ovserved as follows:

In the cases before us the contracts do not contain any statutory terms or obligation and no statutory power or obligation which could attract the application of Article 14 of the Constitution is involved here. Even in cases where the question is of choice or consideration of competing claim before and entry into the field of contract facts have to be investigated and found before the question of a violation of arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. Such proceedings are summary proceedings reserved for extraordinary cases where the exceptional and what are described as, perhaps not quite accurately, "prerogative" powers of the Court are involved. We are certain that the cases before us are not such in which powers under Article 226 of the constitution could be invoked.

9. In our opinion, in the instant case as well, the claim of the Petitioners is entirely based on the terms and condition of a concluded contract. The contracts do not contain any statutory terms or obligations. No breach of statutory power or obligation is involved in the Instant case which may attract the application of Article 14 and 19 of the Constitution. We are of the firm opinion that the prerogative power of the High Court cannot be invoked in the instant case, We are also of opinion that the case before us is not such in which we can exercise power and jurisdiction under Article 226 of the Constitution.

10. Mr. G.K. Talukdar, learned Counsel for the Petitioners, in support of his case, has relied on the Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., The facts as well as questions of law of that ease are poles apart. There, the agreement to advance the loan5 was entered into by the Appellant-corporation in performance of the statutory duty cast on it by the Statute under which it was created and set up. As such, the agreement to advance loan was entered into by the Appellant in exercise of their statutory duty, and accordingly writ of mandamus could issue. However, in the instant case the claim of the Petitioners is out and out for implementation of the terms of the contract and/or the implementation of the contractual rights and obligations of the parties, which claim in our opinion cannot be entertained in exercise of the power under Article 226 of the Constitution.

11. For the foregoing reasons we bold that the petition is not maintainable under Article 226 of the Constitution of India, and accordingly, it is dismissed in limine.

12. However, it will be open for the Petitioner to take any civil action in any appropriate court, if so advised.

