
(1993) 07 CAL CK 0027

In the Calcutta High Court

Case No : Appeal No. 312 of 1993 and Matter No. 1008 of 1993

West Bengal Properties Ltd. and another APPELLANT

Vs

State of West Bengal and others RESPONDENT

Date of Decision : 29-07-1993

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 396, 600
Calcutta Municipal Corporation Building Rules, 1990 — Rule 4(4)
Registration Act, 1908 — Section 17(1), 26, 26(2), 27, 27(4)
Urban Land (Ceiling and Regulation) Act, 1976 — Section 27(1), 28, 5(3)

Citation : AIR 1994 Cal 82 : (1993) 2 CALLT 342

Hon'ble Judges : Bhagabati Prasad Banerjee, J; Asok Kumar Chakravarty, J

Bench : Division Bench

Advocate : Mukul Gopal Banerjee, for the Appellant; Mihir Kr. Roy, for the Respondent

Judgement

Asok Kumar Chakravarty, J.—This appeal is directed against the Judgment and Order dated 7th April, 1993 passed by the Ld. Trial Judge in matter No. of 1993 (West Bengal Properties and another v. State of West Bengal and others).

2. . Facts giving rise of this appeal are as follows :

Petitioner No. 1 which is a limited company with its Office 16, Alipore Road, Calcutta and is the owner of the said premises (hereinafter to be referred as the said premises), submitted a plan for construction of a two-storeyed building before the respondent authorities along with a deposit of Rs. 10/- on 24-9-92 as application fees. By letter dated 13-12-92, the said authorities informed that certain other formalities have got to be complied with and after due compliance of those formalities by its letter dated 22nd December, 1992 submitted a revised plan, Since the respondent authorities have not sanctioned the plan in spite of due compliance of all formalities, it enquired about the matter and came to know from the respondent authorities that the plan was not being sanctioned as "no objection certificate" from the Land Ceiling Authorities have not been appended

to the application for sanction of the plan. The petitioner has challenged that respondent authority has no legal justification for insisting on production of such certificate from the Urban Land Ceiling Authorities that there is no reason for withholding sanction of the building plan of the petitioner. The petitioner accordingly moved a writ petition before the Ld. Trial Judge and by his order dated 29-3-93 on the basis of his observations that the specific case of the petitioners being that the plan has obtained the clearance of the Urban Land Ceiling Authorities directed the Municipal Authorities to produce the records relating to the plan submitted by the petitioners. Ld. Trial Judge, however, by another order dated 7-4-93, directed to respondents to file their affidavit-in-opposition on 26-4-93 as the observations in his earlier order that the specific case of the petitioners was that the clearance certificate has been obtained from the Urban Land Ceiling Authorities was erroneous.

3. Being aggrieved by the aforesaid order of the Ld. Trial Judge, the petitioners has preferred this appeal alleging, inter alia, that the petitioners have neither any land beyond its permissible ceiling limit nor the respondent authorities have any right or justification to insist upon the clearance or no objection certificate from the Land Ceiling Authorities under the relevant Calcutta Municipal Corporation Building Rules, 1990.

4. Mr. Mukul Gopal Banerjee, Ld. Counsel appearing for the petitioners drew our attention to sub-rule (4) of Rule 4 of C.M.C. Building Rules, 1990, which runs as follows, "in case of a site or a plot covered by the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976), the notice shall be accompanied by a declaration of the applicant that his exclusive right to erect, re-erect or alter any building or portion thereof is not affected under that Act". For that purpose, our attention was drawn to the affidavit filed on behalf of the petitioners to the effect that there they have no vacant land or any other land with building therein in any of the Urban Agglomeration covered of the said Act and that in the event of the aforesaid land being declared to be in excess by the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976, the petitioners shall abide by the direction of the competent authority under the Act. The petitioners have, therefore, nothing more to do in the matter of sanction of that plan and the respondent authorities, according to Mr. Banerjee, had no justification for withholding the sanction of the plan in question.

5. Mr. Mihir Kr. Roy, Ld. Counsel, appearing for the respondent No. 2, however, had two-fold submissions to make in the matter. His first submission was that by the notification No. 189/CC/3R-8/C-2/92 dated 29-2-93 sub-rule (4) of Rule 4 of the Calcutta Municipal Corporation Building Rules, 1990, has been substituted and the "no objection certificate" from the competent authority appointed by the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) is required to be accompanied with the notice for sanction of building plan in case of a site or a plot measuring 5 Sq. metre or above. In so far as this point is concerned it is clear that the plan in question was submitted to the respondent authorities on

the 24th September, 1992. Since the notification referred, to by Mr. Roy, came into existence long after the said date, i.e., 29-3-93, there cannot be any question of the applications of such notification in so far as the sanction of the building plan of the petitioner is concerned as that can have application only prospectively. One of the primary duties of the Calcutta Municipal Corporation is to regulate the building construction of the city and for that purpose to sanction plan according to the Rules framed under Calcutta Municipal Corporation Act, 1980. Since the Municipal Corporation has no authority under the law to enforce or administer the law relating to Urban Land (Ceiling and Regulation) Act, 1976 and since there is no corresponding provision in Urban Land (Ceiling and Regulation) Act, 1976 making it obligatory for the competent authority, appointed under the Act to issue a "no objection certificate" whenever sought for by any person deciding to submit any building plan to the appropriate authority for sanction, absence of such certificate cannot be sine qua non for sanctioning any building plan. Had it been provided under the provisions of the Urban Land (Ceiling and Regulation) Act that the Calcutta Municipal Corporation shall not sanction any plan for construction coming within the Urban agglomeration without first obtaining the permission of the competent authority under the Land Ceiling Act the positions might have been different. The direction of the Municipal Corporation asking the petitioner to furnish "no objection certificate" from the competent authority, in the above circumstances, is certainly without jurisdiction. In this connection, reference may be made to the Division Bench decision of this Court in Ram Nath Mehra v. Calcutta Municipal Corporation, reported in (1988) 1 CLJ 295 where it was held that the Calcutta Municipal Corporation cannot insist on the production of "no objection certificate" from the competent authority. The production of the "no objection certificate" accordingly was wrongly insisted upon in this particular case.

6. Mr. Roy finally submitted that the affidavit filed by the petitioner is not also in the form as prescribed in schedule one of the C.M.C. Building Rules, 1990. The notice itself is not before the Court and the affidavit produced before the Court shows that it has been sworn according to the provisions of the statute. This objection, therefore, cannot also be sustained.

7. It is firmly established principle that unless the rule-making-authority are specifically conferred power in the Act to make rules retrospectively the rules cannot have any retrospective effect. Further a plan has to be sanctioned on the basis of the rules and regulations prevailing on the date when such plan was submitted. By making a rule subsequent to the filing of the application for sanction of a plan the Municipal authority cannot affect the rights of the applicant. The amendment of Rule 4(4) of the said rules cannot have any retrospective effect and relying on such subsequent amendment the applicant cannot call upon to comply with the same. That apart, there is no provision under the Urban Land (Ceiling and Regulation) Act, 1976 for issue of a "no objection certificate" for the purpose of making construction on any land. Section 28 of the Urban Land (Ceiling and Regulation) Act, 1976 provides:

"Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of clauses (a) to (e) of sub-section (1) of S. 17 of the Registration Act, 1908 (16 of 1908) purports to transfer by way of sale, mortgage, gift, lease or otherwise any land, or any building (including any portion thereof) -

(a) in the case of any transfer referred to in S. 26 no registering officer appointed under that Act shall register any such document unless the transferor produces before such registering officer evidence to show that he was given notice of the intended transfer to the competent authority under that section and, where such transfer is by way of sale, the period of sixty days referred to in sub-section (2) of that section has elapsed

(b) in the case of any transfer referred to in S. 27 no registering officer appointed under that Act shall register any such document unless the transferor produces before such registering officer the permission in writing of the competent authority for such transfer or satisfies the registering officer that the period of sixty days referred to in sub-section (4) of that section has elapsed."

Section 27(1) of the Urban Land (Ceiling and Regulation) Act, 1976 provides that no person should transfer any property by way of sale, mortgage, gift or a lease for a period exceeding 10 years or otherwise of any urbanisable land with a building or a portion of such building except with the previous permission in writing of the competent authority. This provision of S. 27(1) has been declared ultra vires by Supreme Court in the case of Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others, Therefore no permission is now required from the competent authority for transfer of urban or urbanisable land with a building within ceiling limit and the registering authority cannot refuse to transfer deed of transfer of urban land and urbanisable land with a building or any part of such building provided all the forms for registration are complied with. It must be borne in mind that mere raising a construction on any land has nothing to do with the ownership of the land and that by making construction one does not become the owner of the land in question. If a land is excess of the ceiling limit under the Urban Land (Ceiling and Regulation) Act, 1976 in that event the same vests to the State from encumbrances and that at any point of time if it comes to the notice of the authorities concerned that any land was in excess of the ceiling limit, the same shall stand vested to the State and a party cannot claim any right over the same. The Urban Land (Ceiling and Regulation) Act, 1976 did not contemplate any restriction and/or condition for the purpose of making construction on any vacant land if the vacant land was beyond the ceiling limit, in that event by making more construction nothing wrong is done. Section 5(3) of the Urban Land (Ceiling and Regulation) Act, 1976 provides that no person holding a vacant land in excess of the ceiling limit shall transfer in excess limit and if such transfer is made, the same would be deemed to be null and void. Whether or not land is covered under the Land Ceiling Act or whether it was within the ceiling limit or not are matters for the Urban Land Ceiling Authorities

and not for the Municipal Authorities. For obtaining the plan and making a construction does not and cannot change the nature of the right, title and interest in the land in question. If it is in excess of the Ceiling limit, even if construction is made on such land, the same should stand vested to the State. The Municipal authorities are only concerned with the planning of the cities and to see that no construction is made save in accordance with the sanctioned plan and after complying with the conditions and restrictions imposed under the municipal laws. It had no jurisdiction to adjudicate on the question of ownership of the land in question. The Municipal authorities are concerned with the prima facie title of the applicant in such land. The sanctioning of plan did not and could not create any right, title and interest in the land in question if it is not otherwise there and as such it is beyond the scope of the powers of the municipal authorities under the Act and lay down any procedure travelling the scope and ambit of the Act which had no nexus with the object sought to be achieved by sanctioning of such plan under the law.

8. No other point was taken in the appeal, since both the objections on behalf of the respondents in justification for refusal of the sanction plan by the respondents are not tenable, the appeal must succeed.

9. The appeal is accordingly allowed and the order of Ld. trial Court dt. 7-4-93 is hereby set aside. The respondent No. 2 is hereby directed to accord sanction of the plan of the petitioners within three weeks from this date and the respondent authority are hereby restrained from giving effect to the letter issued by the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 dated 23-2-93.

10. All parties to act on a signed xerox copy of this judgment on the usual undertaking.

Bhagabati Prasad Banerjee, J.

11. I agree.

12. Appeal allowed.