(1982) 1 GLR 208

Gauhati High Court

Case No: Civil Revision No. 1 of 1978

Ranadhir Dutta		APPELLANT
	Vs	
The State of Assam and Others		RESPONDENT

Date of Decision: Nov. 25, 1981

Citation: (1982) 1 GLR 208

Hon'ble Judges: B.L. Hansaria, J

Bench: Single Bench

Advocate: J.P. Bhattacharjee and S.N. Medhi, for the Appellant; K. Mazumdar and S. Ali, for the Respondent

Final Decision: Allowed

Judgement

B.L. Hansaria, J.

The father of the Petitioner was a lessee of 2 k. 13 lechas of land under dag No. 955 (old)/2089 (new) of patta No. 148 (old)/376 (new) of Makarpatty, Gauhati. The lease was obtained on 23.1.1928. It is the case of the Petitioner that his father constructed a house of permanent structure over the land within a period of five years from the date of execution of the lease. As the house became old and dilapidated, the Petitioner proposed to construct a R.C.C. building on a part of the leasehold land. The Gauhati Municipal Corporation was approached to accord its permission, which was so accorded as per Annexure-I dated 7.1.75. According to the Petitioner he started construction and made considerable progress. In the mean time he received a notice from the Additional Commissioner on 9.4.75 stating that be should not proceed with the work without his permission as he had been appointed receiver with respect to the land in question. The Petitioner did seek his permission which was virtually allowed on 17.5,75 as per Aunexure-V. Subsequently, this permission to construct R.C.C. house was converted to one of modern Assam type house. The Petitioner did not feel happy at it as he had proceeded further with the construction of R.C.C. building. As the communication had come from the receiver, the Petitioner felt it advisable to approach the court who had

appointed the receiver. Though the Additional Deputy Commissioner had been so appointed in Title Suit No. 110 of 1958, it was the learned District Judge who was approached as he was in seisin of the matter arising out of an appeal form the Title Suit, The learned District Judge did not concede to the prayer of the Petitioner as he felt that the matter relating to construction of a new building was between the Petitioner and the receiver and the court was not to give any direction to the receiver on this matter. It also felt that the receiver should not allow a tenant to change the nature of the structure over the suit property because such change will create future complications.

2. It is submitted by Shri Bhattacharjee for the Petitioner that as the receiver was an officer of the court, the learned District Judge was apparently wrong in stating that it was a matter between the Petitioner and the receiver and the court was not empowered to give any direction to the receiver on this matter. It is trite to say that receiver is an officer of the court and is bound to carry out all its directions and really cannot act against such directions. A perusal of the order dated 9.2.73 by which the receiver was appointed would show that the receiver was to take charge of the vacant land. It is further stated in that order that the tenants wanted to construct new houses will be governed by the terms of the documents on the basis of which they had been inducted as tenants. The receiver was injuncted not to settle the vacant land with anybody without previous permission of the court. He was asked to inform the court for necessary action against those who dispossessed others from the land or who did illegal acts After he takes charge of the property. The receiver was to realise rents from those persons who are in occupation of the land and houses thereno.

3. The above would show that if in the opinion of the receiver the Petitioner was carrying on any activity which was illegal or which was not authorised by the terms of the documents by which he had come to occupy the land, the receiver was to bring the same to the notice of the court for necessary action. As such the learned District Judge was not right in saying that it was a matter between the Petitioner and the receiver. Nothing has been brought to my notice to show that the Petitioner was carrying on any illegal activity- Really the receiver himself clearly permitted construction of a modern Assam type house instead of R.C.C. building. According to the learned Government Advocate this had been done on the Objection raised by the Plaintiff in Title Suit No. 110 of 1958. shri Khalilur Rahman, who requested the receiver to stop unauthorised construction. Now if the construction was thought to be unauthorised, construction of modern Assam type house as well would have been unauthorised. But the permission to raise such a construction would show that the receiver did not think it to be illegal or unauthorised act. This apart, as the permission of the Corporation seems to have been to construct a R.C.C. house and as the plot of land seems to be rather small, it is the construction of R.C.C. house which was thought advisable by the Petitioner. I do not find anything on record before me authorising the receiver to stop such a construction.

4. In view of the above, it is held that the learned District Judge committed an error of law and really failed to exercise his jurisdiction in not issuing proper direction to the receiver in

the matter. As the permission of the corporation is for construction of R.C.C. building and as the same does not appear to be an illegal act, from the materials placed before me, it was a fit one where the learned District Judge should have allowed the construction to proceed.

5. Accordingly, the petition is allowed and the Petitioner would be within his rights to proceed with the construction of the R.C.C. house. But the same would not confer on him any right which he had not otherwise acquired under the terms of the document or under any other law for the time being in force. The construction would also not prejudice any of the right of the lessors in any way.