

(2004) 07 CAL CK 0002

Calcutta High Court

Case No: C.O. No. 1470 of 2004

Kolkata Municipal Corporation

APPELLANT

Vs

Chanda Properties Private
Limited

RESPONDENT

Date of Decision: July 6, 2004

Acts Referred:

- Calcutta Municipal Corporation Act, 1980 - Section 189, 586, 586(4)
- Specific Relief Act, 1963 - Section 38

Citation: (2005) 1 CHN 501

Hon'ble Judges: Girish Chandra Gupta, J

Bench: Single Bench

Advocate: Ashok Das Adhikari and Sandip Kumar De, for the Appellant; P.K. Ray, A. Banerjee and T. Ganguly, for the Respondent

Judgement

Girish Chandra Gupta, J.

A notice dated 4th September, 2003 was issued by the Kolkata Municipal Corporation u/s 184(3) and (4) of the Calcutta Municipal Corporation Act, 1980 proposing annual valuation of premises No. 223, Bidhan Sarani at a sum of Rs. 6,43,210/- with effect from 4th quarter of the Financial Year 1998-99. By the notice the assessee was notified that he might file objection, if any, to the proposed annual valuation and that the hearing would take place on 14th June, 2004.

2. On or about 11th December, 2003, the assessee filed a suit in the City Civil Court at Calcutta which was registered as Title Suit No. 1788 of 2003 claiming the following reliefs :

(i) The plaintiff is entitled to a Decree for declaration that the purported annual valuation and/or the rise from Rs. 76,290/- to Rs. 6,43,210/-with effect from 4th quarter 1998-1999 in respect of the premises No. 223, Bidhan Sarani, Kolkata-700006, P. S. Jorasanko is bad, illegal and not binding upon the plaintiff and

the same is liable to be cancelled and/or delivered up as the same is not tenable in the eye of law.

(ii) Permanent injunction restraining the defendants and their men, agents, servants, associates, and employees, from giving effect to the purported rise as above and/or take any further steps in aid thereof or any furtherance of the said rights.

3. An application for temporary injunction was filed, wherein an ex parte order of ad interim injunction restraining the Corporation from giving effect to the increased valuation until the disposal of the application for temporary injunction was passed on 16th December, 2003.

4. Upon service of notice about the order of injunction, having been passed by the Trial Court together with a copy of the plaint, the defendant Municipal Corporation applied for rejection of the plaint under Order 7 Rule 11(d) on the ground that the suit appears to be barred by law from the statements made in the plaint. The learned Trial Court not only rejected the application but also issued a sort of declaration coupled with a direction upon the plaintiff to pay at the old rate together with 10 per cent increase. It would be apposite to set out the said direction which reads as follows :

"The plaintiff is directed to deposit the tax for the period on the basis of admitted amount of previous annual valuation plus 10% of such valuation, at this stage, in the office of the defendants by the date fixed and to file receipt to that effect before this Court by the date fixed. However, if the defendants do not agree to accept such tax on the basis of such preliminary valuation, then the plaintiff will have no responsibility for depositing any tax in question on the basis of the enhanced valuation till disposal of this suit."

5. As regards merits of the application under Order 7 Rule 11, the learned Trial Court has opined as follows:

"In the present plaint, the determination of valuation or assessment has not been directly challenged, but it has been pleaded that without servicing notice assessment was done and there was no communication of assessment order and, as such, no scope was given to the plaintiff to file appeal against the assessment order before the Assessment Tribunal and, as such, the order of raising the annual valuation is illegal and not binding on the plaintiff."

6. One needs only to compare the aforesaid finding with prayer (a) contained in the plaint. It would at once become clear that the finding of the learned Trial Court that the determination of valuation or assessment is not under challenge is perverse.

7. Aggrieved by the order, the Kolkata Municipal Corporation has come up before this Court under Article 227.

8. Mr. Das Adhikari, the learned Senior Advocate, appearing for the petitioner, submitted as follows :

(a) The suit against the Corporation without a notice u/s 586 is specifically barred.

(b) The suit is barred u/s 189(9) of the Calcutta Municipal Corporation Act, 1980.

(c) That a Civil Court cannot entertain a suit cognizance whereof is either expressly or impliedly barred.

(d) That a suit, which is aimed at rendering the provisions of the law nugatory or is intended to by-pass the provision of law, should be nipped in the bud.

9. Mr. Ray, the learned Senior Advocate, appearing for the plaintiffs/ opposite parties made the following submissions :

(a) With regard to Section 586 of the Calcutta Municipal Corporation Act, he drew my attention to Sub-section(4) of the aforesaid section which provides as follows :

Sub-section(4): Nothing in the foregoing Sub-sections shall apply to any suit instituted u/s 38 of the Specific Relief Act, 1963."

10. He submitted that Section 38 of the Specific Relief Act provides for perpetual injunction and a suit for perpetual injunction is excepted from the rigours of Section 586. He drew my attention to prayer(b) contained in the plaint and submitted that since the suit is a suit for perpetual injunction, Section 586 has no manner of application.

11. I have not been impressed by this submission. Section 38(1) of the Specific Relief Act provides as follows :

"Section 38(1) : Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

12. It would at once become clear from the aforesaid Sub-section quoted above that the perpetual injunction contemplated u/s 38 of the Specific Relief Act is really in the nature of specific performance where there exists an obligation in favour of the plaintiff. Obligation may be contractual, obligation may be statutory. There is no pleading in the plaint with regard to the existence of any such obligation in favour of the plaintiff. To be fair to Mr. Ray, paragraph 17 of the plaint should be looked into which contains the following allegations :

"Para-17 : The plaintiff also states that the defendant No. 1 being a statutory authority is under a legal obligation to cause rise of the annual valuation strictly adhering to the liberty of natural justice as well as the provisions of law as laid down under the Kolkata Municipal Corporation Act, 1980."

13. Paragraph 17 does not really make any sense. I have enquired of Mr. Ray as to what was the obligation which the draftsman had in his mind. His answer was that this is a classic example of muffassil pleading and should be viewed with some amount of latitude.

14. This Court is of the view that in the absence of a clear cut pleading to show that the perpetual injunction has been claimed on the basis of Section 38 of the Specific Relief Act, there is no reason to hold that Sub-section (4) of Section 586 of the Calcutta Municipal Corporation Act shall come into play. An additional reason which fortifies my view is the fact that by the prayer(a) the plaintiff has claimed a declaration that the valuation of the property at Rs. 6,43,210/- is bad. It follows, therefore, that prayer(b) is really a consequential prayer and is not based on any obligation existing in favour of the plaintiff as suggested by Mr. Ray. Moreover this cannot be treated to be a suit for perpetual injunction simpliciter. It is a suit for declaration and perpetual injunction which is not obviously saved u/s 586 of the Calcutta Municipal Corporation Act, 1980.

15. The next submission made by Mr. Ray was that the subject-matter of challenge in the suit is the notice. He submitted that the legality of the notice is under challenge and that the legality of the notice could not have been referred to the Tribunal. In support of his submission, he referred to Section 189(9) of the Calcutta Municipal Corporation Act which provides as follows :

"Section 189(9) : The decision of the Tribunal with regard to valuation or assessment shall be final and no suit or proceeding shall lie in any Civil Court in respect of any matter which has been or may be referred to or has been decided by the Tribunal."

16. He submitted that the bar contained in Sub-section(9) is so far as the same is material for our purpose is confined to the expression "may be referred". According to him the question as regards the validity of the notice cannot be referred to the Tribunal. Therefore, he added, it cannot be said that the suit is barred by law.

17. This Court has not been impressed by this submission either because-

(a) the prayer contained in the plaint goes to show that it is the valuation which is under challenge. Insofar as the valuation is concerned, there is a specific provision for an appeal against a valuation u/s 189(5) and (6). Valuation is made u/s 188 and there is a provision for appeal against such valuation u/s 189. Therefore, for challenging the legality of a valuation, a specific provision has been made in the Act and the jurisdiction of the Civil Court has been specifically barred.

(b) The submission that what is under challenge is the notice and not the valuation is further belied by the allegations contained in paragraph 16 of the plaint which contains the following allegations :

"Para 16: Therefore, the plaintiff states that the said annual valuation is not effective in the eye of law in view of the fact that no notice of hearing of the rise of the said

valuation was made to the plaintiff and/or the erstwhile owner and that the said rise in the annual valuation has been made regularly in every year which the defendants are not entitled to does the provisions of the Municipal law."

(c) The submission that the subject-matter of challenge in the suit is the notice, which has been referred to in paragraph 22 of the plaint cannot be accepted. If the notice is under challenge then it is axiomatic that there are objections against the notice. No one will say that he is challenging the notice although he has objection to that. He is challenging the notice presumably because he has objection against the notice and for the purpose of filing an objection to the notice there is specific provisions in the Act under Sections 184(3) and 186. The Act thereafter makes a provision for hearing for such objection u/s 188 and thereafter there is provision for appeal u/s 189. Can it, therefore, be said that an objection to the notice is a matter which is not referable to the Tribunal?

18. The objection to the notice shall be gone into at the hearing u/s 188 and thereafter the aggrieved party has a right of appeal u/s 189. It cannot, therefore, by any stretch of imagination be said that an objection to a notice cannot become a subject-matter of reference to the Tribunal. No one can be aggrieved by a notice. One is really aggrieved by the contents of the notice. The contents of the notice is the proposed valuation.

19. From a plain reading of the plaint, it would appear that the grievance of the plaintiff/opposite party is that the valuation has been increased from Rs. 76,290/- to Rs. 6,43,210/- which, according to him, is illegal and that is his cause of action and for that he has sought for a declaration to that effect.

20. Therefore, the submission that the notice and not the valuation is under challenge becomes difficult to accept.

21. The validity of a valuation can only be challenged u/s 189 and, therefore, the suit is clearly barred by law. The application made by the petitioner under Order 7 Rule 11(d), therefore, succeeds. The present application is, therefore, allowed. The plaint is rejected. The opposite party shall pay costs assessed at Rs. 10,000/-. All interim orders passed by the Court below are vacated.

22. Let xerox certified copy of this order, if applied for by the parties, be delivered to them.