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Calcutta High Court

Case No: C.O. No. 4518 of 2005

Sk. Ramjan Ali	APPELLANT
Vs	
The Chief Executive Officer and Others	RESPONDENT

Date of Decision: Aug. 22, 2007

Acts Referred:

- Calcutta Municipal Corporation Act, 1980 - Section 401
- Constitution of India, 1950 - Article 226, 227
- Specific Relief Act, 1963 - Section 34
- Waqf Act, 1995 - Section 54, 55, 85, 89

Citation: (2008) 1 CALLT 166

Hon'ble Judges: Sailendra Prasad Talukdar, J

Bench: Single Bench

Advocate: S.P. Roychowdhury, Sadananda Ganguly, Md. Yamin Ali, Soma Roy Chowdhury, Sufi Kamal, Jahangir Hossain and Shibaji Kr. Das, for the Appellant;Sudhis Dasgupta, Sahidullah Munshi and Nilofer Siddique Alam, for the Respondent

Final Decision: Dismissed

Judgement

Sailendra Prasad Talukdar, J.
This petitioner, Sk. Ramjan Ali, by filing this application under Article 227 of the Constitution has challenged the orders dated 5.9.2005 and 8.12.2005 passed by the Sub-Divisional Magistrate, Sadar, Alipore, South 24-Parganas.

2. Grievances of the petitioner, as ventilated in the application, may briefly be stated as follows:

The petitioner along with his family members have been permanently residing in premises No. 6A, Dr. Biresh Guha Street (P.S. Karaya) which was formerly known and numbered as 29/C, Dilkhusha Street and thereafter, as 56A Dilkhusha Street.

3. Such property measuring more or less 2 cottahs and 12 chittacks originally belonged to one Salila Bibi alias Salehannessa who settled the land at premises No. 6A, Dr. Biresh Guha Street in favour of one Asma Khatoon, wife of Hazi Imam Molla. The said Hazi Imam Ali Molla by constructing structure of brick built walls with tin shed on the said land had been residing with Sk. Ramjan Ali and Sahadad Ali and their family. After the death of Asma Khatoon, the present petitioner and Sahadad Ali as well as their family members have been residing in the said premises with their cousin Imdad Ali, the son of Asma Khatoon, since deceased. The petitioner, thus, has been in possession of such property since long. One Sk. Niamat Ali, O.P. No. 3 was collecting rent, though he refused to grant rent receipts to the petitioner thereby compelling the petitioner to deposit rent in the Rent Control. The present petitioner as well as Sk. Sahadad Ali have various documents like trade licence, electric bills and others in support of their claim of possession in respect of the disputed property.

4. Said property due to natural wear and tear was so damaged that the petitioner was compelled to apply before the Assistant, City Architect, Kolkata Municipal Corporation for permission for doing the repair work. The said authority by letter dated 2.7.1998 upon receipt of necessary charges, granted permission in favour of the petitioner for doing the said repair work. When such repair work was in progress, the O.P. No. 3 with his men prevented the petitioner from proceeding with said repair work. The petitioner was advised to file a civil suit and accordingly he filed a Title Suit being No. 221 of 1998 before the 2nd Court of learned Civil Judge (Junior Division), Alipore for declaration and permanent injunction. In the said suit, his prayer for temporary injunction was refused and he preferred Misc. Appeal No. 273 of 1998 before the learned Court of District Judge at Alipore. In connection with said Miscellaneous Appeal, the petitioner was favoured with an order of injunction which was challenged by the present O.P. No. 3, who preferred a revisional application before the High Court being CO. No. 2258 of 1998. The learned single Judge of this Court by order dated 17.9.1998 disposed of the said revisional application by directing the respondent/petitioner not to make any construction in the suit premises except effecting the essential repair work in respect of the roof of the structure till disposal of Miscellaneous Appeal.

5. The petitioner, thereafter, started making essential repair work in respect of the roof. O.P. No. 3 managed to get a notice u/s 401 of the Kolkata Municipal Corporation Act served upon the petitioner without mentioning anything about any alleged addition or alteration. The petitioner filed a writ application being W.P. No. 1552(W) of 1998. The said writ application was disposed of by the learned single Bench of this Court by order dated 16.1.1999 thereby directing the authorities of the K.M.C. to furnish the particulars of the alleged unauthorized construction within a period of one month from the said date. The petitioner was given liberty to prefer objection against it. The concerned authority of the Kolkata Municipal Corporation disposed of the matter as directed thereby refusing to permit any construction work excepting replacement of the roof by tin shed as well as essential repair and painting works. Thereafter, the petitioner received a notice dated

16.7.2002 (Reference No. 22/78 E.C. No. 13012) in respect of Mst. Salahunnessa Bibi Wakf Estate under the signature of the Chief Executive Board Officer, Board of Wakf. It was alleged therein that the petitioner illegally encroached over the Wakf properties and accordingly he was directed to remove the encroachment and hand over the possession of the Wakf properties mentioned therein i.e. three bed rooms, one kitchen, one bath, one privy and one godown to the Mutawalli of the Wakf Estate being the O.P. No. 3. In the said notice, it was stated that on 21.5.2002 an enquiry was held and on 3.6.2002 and 31.2.1996 documents were produced by the petitioner.

6. The petitioner denied that any enquiry was held on 21.5.2002 but it was on 19.6.2002 in connection with N.C. No. 22/78. The petitioner did not produce any document on 31.2.1996 and 3.6.2000 as alleged. On 19.6.2002 and Badruzzaman disclosing his identity as an employee of the Wakf Board came to the petitioner''s premises and asked him to produce the documents in support of his stay in the disputed premises. The petitioner produced the challan of the Rent Control showing deposits of rent, copy of the plaint of Title Suit No. 221 of 1998 including the order passed in the said suit as well as the permission granted by the K.M.C. for causing repair of the roof and the order of the Hon''ble High Court, as referred to earlier. The petitioner stated that family of his cousin Sahadad Ali, since deceased, has also been residing in the suit premises and produced the death certificate of the said cousin as well as the trade licence and the electric bills and other documents. The petitioner categorically denied that he is a trespasser in respect of the disputed property.

7. The petitioner thereafter moved a writ application being W.P. No. 10813(W) of 2002 against the said notice dated 16.7.2002 sent by the Chief Executive Officer, Board of Wakf. The Hon''ble Justice Pinaki Chandra Ghose by order dated 16.8.2002 directed that since the Wakf Tribunal had already been set up, the petitioner was at liberty to apply before the learned Tribunal and further directed that this record be transmitted to the learned Tribunal at the cost of the petitioner. After about three years, the petitioner was served with a notice dated 5.9.2005 whereby it was stated that as per power delegated upon the Sub Divisional Magistrate, Sadar, Alipore u/s 55 of Wakf Act, he was directed to deliver possession of three bed rooms, one godown, one bath, one privy and one godown. Such notice was issued by the Sub-Divisional Magistrate, Alipore, 24-Parganas (South) u/s 55 of the Wakf Act. There were altogether four bed rooms, one godown, one bath room, one privy and a garage in the entire premises No. 6A, Dr. Biresh Guha Street and the petitioner is residing in only one room with the common facilities of bath and privy. The remaining rooms and the godown etc. are in possession of the family of Sahadad Ali. On receipt of the notice, the petitioner filed an application before the Sub-divisional Magistrate, Sadar, Alipore stating, inter alia, that the Civil Suit being Title Suit No. 221 of 1998 filed by him against the O.P. No. 3 praying for declaration and injunction is pending before the learned 2nd Court of Civil Judge (Junior Division), Alipore in respect of the said premises. It was also stated that the writ application being W.P. No. 10813(W) of 2002 filed by him challenging the notice dated 6.7.2002 of the Chief

Executive Officer, Board of Wakf, West Bengal was directed to be transmitted to the Wakf Tribunal. On 25.10.2005, the O.P. No. 2 after due consideration of materials on record was pleased to stay the order dated 5.9.2005 till the "impending order of the learned Civil Court". On 22.12.2005, the petitioner was surprised to receive an order dated 8.12.2005 from the O.P. No. 2 whereby and whereunder he recalled the order of stay passed on 25.10.2005 and the petitioner was directed to deliver possession in favour of the alleged Mutawalli being O.P. No. 2 by 23rd December, 2005. The Officer-in-charge of the Karaya Police Station was directed to keep close watch and ensure that no breach of peace takes place. The O.P. No. 3 is continuously trying to take possession of the premises N0.6A, Dr. Biresh Guha Street by dispossessing the petitioner and his family. The impugned order of the O.P. No. 2 was challenged by filing a writ application being No. 1769(W) of 2005. Learned single Bench of this Court dismissed said writ petition with the observation that the petitioner was given liberty to apply before the learned Wakf Tribunal but did not file any application to that effect. In the impugned order, reference was also made of Appeal No. 14 of 2005 which was withdrawn by one Fatema Bibi, wife of late Sahadad Ali as the appeal was not maintainable before the learned Tribunal.

8. The O.P. No. 1 erroneously held that the petitioner had illegally encroached the wakf properties and failed to take into consideration the fact that the petitioner had been residing in the said premises for more than 50 years as a tenant. The O.P. No. 1 issued such notice dated 16.7.2002 and thereby acted beyond his jurisdiction. The fact that a civil suit being Title Suit No. 221 of 1998 for declaration and injunction in respect of possession and enjoyment of the petitioner in the premises No. 6A, Dr. Biresh Guha Street is pending had also not been taken into consideration. Thus, the orders passed by the Sub-divisional Magistrate, Sadar, Alipore on 5.9.2005 and 8.12.2005 are illegal and in violation of the principles of natural justice. Being aggrieved by and dissatisfied with the said order, the petitioner approached this Court with such an application under Article 227 of the Constitution praying for setting aside of the same.

9. Affidavit-in-opposition was filed on behalf of O.P. No. 2 and upon his death, the legal heirs and representatives stepped into his shoes and were brought on record by this Court"s order dated 26.7.2007.

10. Mr. S.P. Roychowdhury as learned Counsel for the petitioner has assailed the impugned orders dated 5.9.2005 and dated 8.12.2005 on the ground that the present petitioner was not given an opportunity of hearing and as such, the impugned orders were passed in utter disregard to the basic principles of natural justice.

11. It was initially suggested that the interest of justice would perhaps be served if the present application is disposed of after setting aside the impugned orders and giving direction upon the respective authorities to pass fresh order in accordance with law but after giving an opportunity of hearing to the present petitioner.

12. In course of submission, Mr. Roychowdhury invited attention of the Court to the order dated 25.10.2005 by which the concerned authority stayed the operation of the earlier order dated 5.9.2005 awaiting order from the Civil Court in connection with the pending proceeding as referred to earlier. He then submitted that to the utter shock and surprise of the petitioner, the said authority by subsequent order dated 8.12.2005 vacated such order of stay and that was done behind the back of the petitioner and without giving the petitioner an opportunity of hearing.

13. In response to this, Mr. S. Dasgupta submitted that the present petitioner is enjoying a property by taking recourse to various legal proceedings, though he could not successfully establish his claim in respect of the disputed property in any of the said proceedings. What emerged from the submission of Mr. Dasgupta may be capsulated in a few sentences as follows:

14. The Chief Executive Officer, Board of Wakf, West Bengal issued a notice u/s 54 of the Wakf Act directing the petitioner to vacate an encroachment in respect of the premises N0.6A, Dr. Biresh Guha Street, Calcutta. Such notice dated 5.4.2002 was challenged by the petitioner by filing a writ application being W.P. No. 10813(W) of 2002 and the learned single Bench of this Court by order dated 16.8.2002 disposed of the said application with liberty to the petitioner to apply before the Wakf Tribunal. The Hon''ble Court further issued direction for transmitting the record to the said Tribunal at the cost of the petitioner. The Sub-divisional Magistrate, Sadar, Alipore, 24-Parganas (South) thereafter issued a notice dated 5.9.2005 u/s 55 of the Wakf Act and the petitioner was directed to vacate the encroachment and deliver possession of the disputed property to the Mutawalli by 26.10.2005. This was again challenged by the petitioner by filing a writ application which was registered as W.P. No. 19769(W) of 2005. The learned single Bench of this Court by its order dated 7.10.2005 dismissed the said application under Article 226 of the Constitution.

15. The petitioner, however, obtained an order of stay of operation of the said notice/order dated 5.9.2005 from Sub-divisional Magistrate, Sadar, Alipore. Such order of stay was passed on 25th October, 2005. The Wakf Tribunal dismissed the Appeal No. 14 of 2005 by order dated 22.11.2005 for non-prosecution. The Chief Executive Officer, Board of Wakf, thereafter, wrote to the Sub-divisional Magistrate and requested him to implement the order u/s 55 of the Wakf Act and this was on 8.12.2005. The earlier order dated 25.10.2005 was thus modified and the petitioner was directed to deliver possession of the property to the Mutawalli by 23rd December, 2005. The Officer-in-Charge, Karaya Police Station was asked to keep watch so that no breach of peace takes place. The Civil Suit being Title Suit No. 229 of 1998 which was filed by the petitioner and was pending before the learned 2nd Court of Civil Judge (Junior Division), Alipore was dismissed by order dated 5.6.2007.

16. Referring to all such factual details, it was contended by Mr. Dasgupta that the petitioner first approached this Court with a writ application. The same was not

entertained but liberty was given to the petitioner to approach the Wakf Tribunal. This was as far back in 2002. But the petitioner, for reasons not far to seek, did not choose to follow up. True, a civil suit was filed and taking advantage of pendency of the said civil suit, the petitioner succeeded to remain in possession of the disputed property. Subsequently, when fresh notice u/s 55 of the Wakf Act was issued, the petitioner again knocked the door of this Court by filing a fresh writ application. The same was dismissed and subsequent dismissal of the Civil Suit practically leaves no scope for the petitioner to raise any further controversy.

17. Mr. Dasgupta submitted that while vacating the order of stay which was passed on 25.10.2005, the concerned authority being the Sub-divisional Magistrate, Sadar, Alipore took serious view of the matter that the petitioner suppressed that the writ application filed was dismissed by learned single Bench of this Court by order dated 7.10.2005.

18. Significantly enough, learned Sub-divisional Magistrate, Sadar, Alipore by its order dated 8.12.2005 while vacating this earlier order of stay dated 25.10.2005, though did not make any independent observation of any practice of fraud upon the concerned authority by the present petitioner, was certainly inclined to a considerable extent to take a serious view of the alleged suppression of material facts. On careful consideration of relevant facts and materials, it is found that the order of stay dated 25.10.2005 was passed in the context of pendency of Civil Suit.

19. Mr. Dasgupta invited attention of the Court to the fact that the said Civil Suit was dismissed on 5.6.2007 and as such there could be no reason for standing in the way of vacating such order of stay.

20. Much was submitted by Mr. S.P. Roychowdhury, the learned Counsel of the petitioner, in regard to the claim that nothing can take away a person''s right to be heard before any adverse order is passed against him. In the present case, as submitted by learned Counsel, the agony of the petitioner largely arose out of denial of an opportunity of hearing. Mr. Roychowdhury did not miss to mention that the petitioner has already filed an appeal as against the order of dismissal of the Civil Suit as well as the dismissal of the writ application by the learned single Bench.

21. In this regard, Mr. Munshi who assisted Mr. Dasgupta, as learned Counsel for the O.P. submitted that no notice for any such appeal has so far been received by his client.

On behalf of the petitioner, it was submitted that the controversy raised in the present application is, in fact, alive since long. There was a civil suit in respect of the disputed property and the same was decided in favour of the predecessor-in-interest of the present petitioner as claimed. In this context, reference was made to the earlier proceedings. No such matter could, however, be placed before this Court at the time of hearing of this application which could conclusively indicate that the present petitioner could effectively establish his right, title and interest in respect of the disputed property. Significantly

enough, the petitioner has, in fact, moved from pillar to post and post to pillar ventilating his grievance but only with limited temporary success. Mr. Dasgupta quite rightly submitted that the petitioner as plaintiff could not establish before the learned Civil Court the legitimacy of his claim. On the other hand, the learned Civil Court while dismissing the suit not only referred to the statutory provisions u/s 34 of the Specific Relief Act or Sections 54, 85 and 89 of the Wakf Act, but also dealt with the inherent hollowness of the claim of the plaintiff/petitioner.

22. In such a situation, it is difficult, if not impossible, to accept the grievance ventilated on behalf of the petitioner. No doubt, there had been an order of stay in favour of the present petitioner passed by the Sub-divisional Magistrate but subsequent to the dismissal of the civil suit which was the basis for passing of the said order of stay law must be allowed to take its own course. While vacating the order of stay, the concerned authority took serious view of the fact that the petitioner though referred to the filing of the application being W.P. No. 19769(W) of 2005, did not mention about dismissal of the same by order dated 7.10.2005. It cannot be denied that when a Court finds that there had been any attempt to suppress any material fact which, in fact, did result in passing of a favourable order, there can be no scope for any grievance it such favourable order is vacated on discovery of that suppression. The principle of natural justice cannot have any application in the unusual circumstance arising out of suppression of material fact before a Court of law. The foundation being weak, it is not desirable to think of a strong structure on it.

23. A public authority is under an obligation to discharge its duty in a manner so as to inspire confidence of the persons approaching it. It has the duty to be fair and impartial and to decide in accordance with law. It has the duty to exercise a discretion reasonably and to come to a reasonable decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. The Court can only interfere with the decision of a public authority if it is outside the band of reasonableness. It has the further duty to hold the balance fairly.

24. In response to the present application under Article 227 of the Constitution, this Court is essentially required to consider as to whether the impugned order suffers from any jurisdictional error or not. This power of superintendence involves the duty on the High Court to keep the inferior Courts and Tribunals within the bound of their authority. The High Court in exercise of such power is called upon to ensure that such authorities discharge their duties in a legal manner. It also cannot be denied that this power under Article 227 of the Constitution is to an extent discretionary and cannot be claimed as of right. Having regard to the peculiar background of the case, as discussed earlier, this Court finds no rational justification for any manner of interference with the impugned order.

The present application being CO. No. 4518 of 2005 be accordingly dismissed.

Interim order, if any, stands vacated.

This, however, does not take away the right of the petitioner to ventilate grievances before any competent forum at the appropriate stage.

Xerox certified copy be supplied to the parties as expeditiously as possible.

Later:

Immediately after the order is passed, prayer is made for stay of operation of the same. The same is considered and refused.