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Outram Club and Another Vs Kolkata Municipal Corporation and Others

Writ Petition No. 271 of 2009

Court: Calcutta High Court

Date of Decision: Sept. 2, 2010

Acts Referred:

Calcutta Municipal Corporation Act, 1980 â€" Section 400, 400(1)#Calcutta Municipal Corporation Building Rules, 1990 â€" Rule 100, 109, 3, 3(2), 54#Civil Procedure Code, 1908 (CPC) â€" Order 9 Rule 13#Constitution of India, 1950 â€" Article 227

Hon'ble Judges: Tapen Sen, J

Bench: Single Bench

Advocate: A.K. Das Adhikari and Sudip Deb, for the Appellant; Aloke Kr. Ghosh and Achinto Banerjee for K.M.C., Joy Saha and Aniruddha Mitra for Respondent No. 6 and Bhaskar Sen and Indranil Roy, for Added Respondent, for the Respondent

Final Decision: Dismissed

Judgement

Tapen Sen, J.

The Petitioner No. 1 is a Social Club registered under the West Bengal Societies Registration Act, 1861 and carries on

cultural activities and is situated at 3, Outram Street, Kolkata. It was inducted as a tenant on 25.7.1982 in respect of the rear of the ground-floor

of the main building by the owners by a written Agreement. The Petitioner No. 2 is the President of the Club.

2. The Municipal Building Tribunal, Kolkata and its Chairman passed an Order on 4.12.2008 in B.T. Appeal No. 40 of 2003 whereby and

whereunder the said Appeal was dismissed on contest and the Order appealed against, being the Order dated 8.5.2003 passed in D. Case No.

532-D of 2001-2002 in respect of the said 3, Outram Street, Kolkata (hereinafter referred as the said Premises) was affirmed with a direction

upon the Club to comply with all the terms and conditions of the said Order and to carry out the demolitions under Part ""B"" of the said Order

within 60 days from the date of the Judgment failing which it was Ordered that the Kolkata Municipal Corporation will demolish the same at their

3. These are the subject matter of challenge before this Court in this Writ Petition and the Order is Annexure- P/5. The other Order against which

the Appeal was preferred being Case No. 532-D of 2001-2002 dated 8.5.2003 has been brought on record vide Annexure- P/3.

4. According to the Petitioners, both the Orders are illegal, erroneous, suffer from material irregularity and therefore, should be quashed and set

aside. According to the Petitioners, while granting the tenancy vide Agreement brought on record (Annexure-P/2), the Club was permitted to

make constructions only in respect of some portions of their tenancy and after execution of the Agreement, the Club carried on different kinds of

social activities in respect of the Premises in question (the tenanted portion) without any interruption till 2001. During this period, the Club made

renovations/repairs/reconstructions in respect of said area without interruption and with the knowledge and consent of the owners thereof.

5. It is stated that sometime in the year 2001, the Respondent No. 6 filed a Writ Petition against the Club and other authorities of the Kolkata

Municipal Corporation. It is stated that one of the Hon"ble Judges of this Court passed an Order directing the Corporation to visit the Premises in

order to measure the constructions made by the Club. The said Writ Petition was filed on the basis of allegations that the Club had made various

constructions in respect of the tenanted portions though the Club did not admit the same.

6. It is the further case of the Petitioners that the Municipal Authorities became influenced by the Respondent No. 6 and made certain queries and

thereafter, they initiated a Proceeding u/s 400 of The Kolkata Municipal Corporation Act, 1980. The matter was heard before the Special Officer

(Building) in the presence of the Secretary of the Club as well as in the presence of the Respondent No. 6. The allegations at that stage were that

the Club had made unauthorised constructions in violation of Rules 54, 56, 57, 100 and 109 of The Kolkata Municipal Corporation Building

Rules, 1990. According to the Petitioners, they had not made any unauthorised constructions but had only erected tubular framed structures and

had fixed fibre sheet thereon in respect of the tenanted portions for protection against rain and sunlight and the same was permissible in terms of the

tenancy Agreement. This, according to the Petitioners, was also permissible under Rule 3(b) of the Kolkata Municipal Corporation Building Rules,

1990. According to the further case of the Petitioners, they brought this fact to the notice of the Special Officer (Building) during the hearing and

also submitted that the structure was lawful and that it did not obstruct the free-flow of area and light of the adjacent building.

7. The grievance of the Petitioners is that the learned Special Officer (Building), in spite of such facts having been brought to his notice, regularised

a part of the structure marked as Part-A upon payment of the cost of erection but directed the demolition of the other part, which he marked as

Part-B, without giving specific reasons therefore. This Order was passed on 8.5.2003 and being aggrieved by the portion of the Order of

demolition, the Petitioners filed B.T. Appeal No. 40 of 2003 before the Municiapal Building Tribunal, Kolkata Municipal Corporation.

Respondent No. 6 also filed an Appeal against the portion of the Order of retention of the said Order. The Appeal was heard on several dates,

written arguments submitted but the grievance of the Petitioner is that the Tribunal, without considering the submissions or the written arguments,

passed the impugned Order on 4th December, 2008 dismissing the Appeal. The cross-Appeal filed by the Respondent No. 6 was also not

entertained. The Petitioners have a further grievance that the Tribunal failed to consider that repair/renovation/reconstruction which the Petitioners

had made, were well within the purview of Rule 3(2) of the KMC Building Rules 1990 and the constructions being minor in nature, no one had

been prejudicially affected. The Tribunal also failed to consider that the nature of the constructions/repairs/renovations did not violate any of the

Rules and more particularly, Rules 54, 56, 57, 100 and 109 of the KMC Building Rules, 1990. The Petitioners also have a grievance that since

such constructions/renovations/repairs were so minor in nature that the Tribunal had the discretionary power of allowing their retention but its

approach was not at all liberal and it proceeded to pass an Order of demolition. Other similar grounds have been taken challenging the Order in

the Writ Petition.

8. Affidavits-in-opposition have been filed by Subrata Kr. Roy (Respondent No. 6) as well as by Birendra Kr. Roy (the added Respondent No.

7) both are sons of Late Bankim Chandra Roy and therefore, they are brothers. While Subrata Kr. Roy is a resident of 3, Outram Street, Kolkata,

Birendra Kr. Roy is a resident of 12, Hungerford street, Kolkata.

9. Since the two have filed separate Affidavits-in-opposition, it would therefore be appropriate to set out their cases separately.

Case of Subrata Kumar Roy (Respondent No. 6)

10. This Respondent has stated that he is one of the owners of the entire premises being 3, Outram Street, Kolkata and is one of the Trustees and

beneficiaries of the Trust Estate of Late Bankim Ch. Roy (his father) together with the Trust Estate of Late Kalachand Roy (his paternal uncle). He

has further stated that the Club in question was registered on and from May 2007 under The West Bengal Societies Rules Act, 1961 and as such,

prior to May 2007, it had no locus standi or legal existence.

11. He has further stated that on or about 25.7.1982, an Agreement was entered upon between Sova Roy, Birendra Kr. Roy and himself, as

Trustees of the Estate of Late Bankim Ch. Roy and Late Jyotsna Roy, Mrs. Arati Dutta and Mrs. Bharati Pyne as Trustees of the Estate of Late

Kalachand Roy on the one hand, and the unregistered Club through his President, Ranabir Gupta (since deceased) on the other hand. According

to this Respondent, the said Agreement however cannot be a valid ""Tenancy"" as the Outram Club, at the relevant time, had no legal existence and

in that view of the matter, no valid tenancy can be said to have been created in favour of the Club and at best, it can be construed to be a licence

to use a portion of the said premises which was subsequently cancelled/revoked in June 2004 and repossession suit instituted.

12. This Respondent has stated that after having been given permission to use and occupy the premises, the Club started raising unauthorised

constructions and did not pay any heed to the express warnings of the owners and therefore, Sri Birendra Kr. Roy,one of the owners of the said

premises (added Respondent No. 7) filed Title Suit No. 942 of 1991 before the Learned City Civil Court, Kolkata praying, inter alia, for a

declaration/mandatory injunction etc. against the Club and its members. The City Civil Court at Kolkata passed an Order of injunction restraining

the Club from making constructions but in violation of the said Order, the Club continued to raise unauthorised constructions and therefore, on

17.9.1991, the City Civil Court at Kolkata appointed one Sri B.M. Saha, Engineer Commissioner for local inspection. The said Engineer

Commissioner conducted his inspection on 25.3.1995 and thereafter, on 3.7.1995, he submitted his Report clearly stating about the unauthorised

constructions.

The said Report of the Engineer Commissioner has been marked at ""A"" to the Affidavit-in-opposition.

- 13. This Respondent has further stated that the Club continued with deliberate acts of illegal constructions and therefore, this Respondent also filed
- a Suit, being C.S. No. 22 of 1997 before the Calcutta High Court praying, inter alia, for a Declaration that the members of the said unregistered

association, Outram Club, have no right, title or authority to make additions, alterations, constructions or encroachment and that such constructions

should be demolished and removed forthwith.

14. On 30th July, 1997 the High Court passed an Order appointing one N.S. Dey, Engineer, as a Receiver with a direction to visit the premises

and to ascertain the constructions which were alleged to have been made beyond the plans annexed with the Agreements. The said Receiver, after

due inspection, submitted his Report on 8.2.1997 and the same has been marked as ""B"" to the Affidavit-in-opposition.

15. This Respondent has further stated that he repeatedly wrote letters to the KMC, the last of which was on 20.8.2001, requesting them to

demolish the illegal and unauthorised constructions made by the Club and finally, some officials of the KMC (Building Department), upon receiving

the letter, inspected the premises and submitted a Report to the Director General (Building) of the said Corporation and according to this

Respondent, it clearly stated about unauthorised constructions raised by the Club.

16. Even then, the Corporation did not take any steps and therefore, on 21.12.2001, this Respondent filed a Writ Petition being W.P. No.

2521(W) of 2001 before this Court and on 21.12.2001 itself, Hon"ble Mr. Justice Barin Ghosh passed an Order directing the Corporation to visit

and inspect the premises and measure the constructions.

17. Thereafter, the officials of the Corporation inspected the premises and forwarded their proposals for demolition to the Director General

(Building) on 5th March, 2002.

18. It is his further case that on 7.3.2002 the Director General (Building) took action u/s 400(1) of KMC Act, 1980 and on 18th March, 2002,

the KMC filed an Affidavit in the High Court with a detailed sketch map which they termed as the ""Demolition Plan"" which showed the portions

which were unauthorisedly raised by the Club. According to this Respondent, the Club could do little to challenge the said Affidavit and on the

contrary, admitted the allegations made therein by not filing any reply to the same.

19. The Affidavit of the KMC filed in the Writ Petition has been marked as ""C"" to this Affidavit. This Respondent has further stated that

17.9.2002, another Hon"ble Single Judge of this Court, namely Hon"ble Mr. Justice Bhaskar Bhattacharya, after going through the said Affidavit,

directed the Corporation to conclude the Proceedings for demolition within 2 months from the date of the Order.

20. The Corporation failed to comply with this Order and therefore, this Respondent filed a Contempt Application being C.C. No. 94 of 2003

against the Corporation and on 17.4.2003 the Corporation was directed to strictly comply with the Order dated 17.9.2002 by 17.5.2003.

21. In compliance of the said Order, the Special Officer (Building) heard the Demolition Case No. 532-D of 2001-02 and held that there were

several unauthorised constructions and therefore directed the KMC to demolish the said constructions by its Order dated 8.5.2003. At the same

time, it allowed the retention of certain portions. The said Order is marked ""D"" to this Affidavit.

22. Being aggrieved by the Order of retention of some portions, this Respondent No. 6 filed a Writ Petition before this Court on 5.8.2003 being

W.P. No. 1594 of 2003. At the time of hearing, it transpired that an Appeal had been filed by the President of the Club challenging that part of the

Order dated 8.5.2003 by which demolition had been Ordered, and therefore, on 8.9.2003 the said Writ Petition was disposed of directing the

Respondent No. 6 to approach the Tribunal and file a cross Appeal.

Complying with the said Order, the Respondent No. 6 filed a cross Appeal on 6.11.2003 before the Tribunal challenging that portion of the Order

dated 8.5.2003 by which, the Special Officer had directed the retention of some portions of the premises in question.

On 19th June, 2004, this Respondent No. 6 then terminated the right of permissive possession of the Club and by this legal Notice, demanded

vacant possession of the premises. This letter is marked ""F"".

Thereafter on 4th December, 2008, the Tribunal passed the Order by which it directed the Corporation to remove those portions which were held

to be unauthorised by the Special Officer by its Order dated 8.5.2003 and allowed the retention of the other portions which were so Ordered by

the Special Officer upon payment of charges etc.

23. According to this Respondent, both the Special Officer (Building) as well as the Tribunal, by their Orders dated 8.5.2003 and 4.12.2008.

allowed some portions of unauthorised constructions to be regularised upon payment of charges without taking into consideration that such

permission/Order could have been given only to the owner/landlord and not to a tenant or occupier and also did not consider that the Landlords

had never asked or prayed for the retention of any portion of the unauthorised constructions but had asked for demolition of the entire authorised

constructions. According to this Respondent, the Club has no authority to challenge the Order of demolition and the unauthorised constructions

must be demolished in terms of the Orders.

Case of Birendra Kumar Roy (Added Respondent No. 7)

24. This Respondent has stated that he is one of the Trustees of the Estate of Bankim Ch. Roy (Deceased). He is also the elder brother of the

Respondent No. 6 and according to him, both are joint Trustees as well as beneficiaries of the Trust Estate of Late Bankim Ch. Roy.

25. He has further stated that a portion of Premises No. 3, Outram Street, Kolkata, which was tenanted to the Petitioner No. 1, is jointly owned

by the Trust Estate of Bankim Ch. Roy and the Trust Estate of Kalachand Roy and that, in the capacity of co-Trustee and a beneficiary of the

Trust Estate of Bankim Ch. Roy, he was a co-owner of 3, Outram Street, Kolkata including the portion tenanted to the Petitioner No. 1 and that

he has substantial interest in the said property. He has reiterated the statements of the Respondent No. 6 with regard to his having filed Title Suit

No. 942 of 1991 on 21.6.1991 before the learned City Civil Court, 5th Bench, Kolkata wherein he had challenged the unauthorised additions and

alterations to the suit property being 3, Outram Street, Kolkata. He has also stated that on 15.9.1992, an Order of injunction was passed by the

said Court restraining the Petitioner No. 1 and its men and agents from making constructions etc. on the tenanted premises. This Order, according

to this Respondent, was confirmed on 19.7.2005. These two Orders are collectively marked Annexure-A to the Affidavit-in-opposition of the

Respondent No. 7.

26. This Respondent has further stated that on 10th January, 2007, Title Suit being 942 of 1991, was ultimately Decreed and it was Declared that

the Defendants, being the Petitioner No. 1 and its the then President and Secretary, have no right to make any addition, alteration etc. in respect of

the tenanted premises. They were also restraining by an Order of permanent injunction from making any construction etc.

27. According to this Respondent, the Club is aware of the Decree because it had already filed an Application under Order 9 Rule 13 of the Code

of Civil Procedure, 1908 for setting aside the said Decree which, is still pending.

28. According to the further case of this Respondent, the Petitioners made unauthorised constructions on the Club Premises in which it was a

tenant and the Respondent No. 7, a joint Owner. He has further stated that after the Tribunal passed its Order dated 4.12.2008, the Petitioners

went up in Appeal before the Municipal Building Tribunal but they did not make this Respondent a Party to the said Appeal. He has further stated

that the Writ Petitioners have deliberately suppressed the fact pertaining to the Suit and the Decree passed thereon and also about the fact relating

to the earlier Orders of this Court with an oblique motive and did not also deliberately implead him a party to the Proceedings. On the basis of

such suppression of facts, this Respondent has submitted, that the Writ Petition should be dismissed.

29. Other statements have been made with regard to the fact that while granting the tenancy in favour of the Petitioner No. 1, it was permitted to

make constructions only in respect of portions specifically mentioned in the Agreement but the subject matter of the Writ Petition does not fall

within that area. It is not relevant for this Court to record each and every statement made by the Respondent No. 7 as they more or less

complement and supplement the statements and/or the stand taken by the Respondent No. 6.

Case of KMC

30. The Kolkata Municipal Corporation has also filed an Affidavit affirmed on 9.4.2009. Their stand is that the Writ Petition is misconceived and

that admittedly there have been unauthorised constructions. Part-A constructions are not so grave in nature and therefore, they have been allowed

to be retained by the Special Officer (Building) on terms and conditions set out in the Order itself but so far as Part-B constructions are concerned,

they are grave in nature and therefore, they have been directed to be demolished by the Special Officer (Building). The Order of the Special

Officer was not interfered with by the Municipal Building Tribunal. According to them, the Petitioners are law-breakers and the Writ Petition

suffers from mis-representation and suppression of facts. They have further stated that the Proceedings u/s 400(1) was initiated pursuant to the

Order of this Court and if such constructions are allowed to stand, they would create several hazards such as fire, traffic etc., apart from the fact

that the constructions were made in a haphazard manner without following the norms and practices of civil engineering and the structural stability of

these constructions was also doubtful. They have further stated that in Civil Suit No. 22 of 1997, an Engineer-Receiver was appointed by the

Court and his Report showed widespread illegal and unauthorised constructions made by the Club. The said Report was never challenged or

objected to. They have further stated in another Writ Petition, being W.P. 2521(W) of 2001, the Kolkata Municipal Corporation had filed an

Affidavit admitting the authenticity of the said Report. They have also strongly refuted the contentions of the Petitioners that the constructions made

are sustainable or minor in nature.

31. Before this Court proceeds to adjudicate the matter, it would like to record that on 14th August, 2009, the following Order was passed by this

IN THE HIGH COURT AT CALCUTTA
Constitution Writ Jurisdiction
ORIGINAL SIDE
Outram Club and Anr. Petitioners
v.
Kolkata Municipal Corporation Respondents
Mr. Ashoke Das Adhikari, Advocate
Mr. Sudip Das, Advocate
Ms. Soma Biswas, Advocatefor the Petitioners
Mr. Aloke Kumar Ghosh, Advocate
Mr. Achinta Banerjee, AdvocateFor K.M.C.
Mr. Aniruddha Mitra, AdvocateFor the Pvt. Respdt. No. 6
PRESENT:
The HON"BLE JUSTICE
Tapen Sen
August 14, 2009
The Court: A Supplementary Affidavit has been filed annexing therein some photographs in order to establish that there is no violation and that the
structures are all innocent which do not need the intervention of the Kolkata Municipal Corporation in the manner sought to be done. However,
Mr. Aniruddha Mitra, learned Counsel appearing for the Respondent No. 6, submits that the photographs appended to the Supplementary
Affidavit are old photographs and the Petitioners have actually made substantial illegal constructions which need to be pulled down as they have
made not only illegally but also without the consent of the landlord.
Upon such submissions being made, Mr. Aloke Kumar Ghose, learned Counsel appearing for the Kolkata Municipal Corporation, promptly
proceeded to support Mr. Mitra"s submissions and under such circumstances, this Court is of the opinion that an Officer of this Court be
appointed for purposes of taking current photographs of the areas in question and submit them to this Court for ascertaining the correct status.
Both Mr. Mitra as well as Mr. Das Adhikary have suggested the name of Mr. Reetobrata Mitra, a learned Member of the Bar Library Club. Mr.

Aloke Kumar Ghose, learned Counsel appearing for the Kolkata Municipal Corporation, has also given his consent to the name of

Court:

WP No. 271 of 2009

Mr. Reetobrata

Mitra.

Under the circumstances, Mr. Mitra is directed to act as an Officer of this Court and proceed to the Outram Club and take photographs of the

areas in question wherever buildings or structures have been made and submit those photographs to this Court on the next date of hearing. If

necessary, Mr. Mitra may take the assistance of a professional photographer.

For the aforementioned purpose, this Court directs both the Petitioners as well as the Respondent No. 6 to jointly pay a sum of Rs. 11,000/- to

Mr. Mitra which will cover his fees plus transport charges plus cost of photographs including expenses that he may incur towards charges for

professional photographer"s fees.

Let this matter appear in the list on 24th August, 2009. Interim Order shall continue till 1st September, 2009.

All parties are to act on a photostat signed copy of this Order on usual undertakings.

(Tapen Sen, J.)

(Quoted)

Thereafter on 24.8.2009, the following Order was passed:

WP No. 271 of 2009

IN THE HIGH COURT AT CALCUTTA

Constitution Writ Jurisdiction

ORIGINAL SIDE

Outram Club and Anr. Petitioners

٧.

Kolkata Municipal Corporation Respondents

For Petitioner: Mr. Ashoke Das Adhikari, Advocate

Mr. Sudip Deb, Advocate

For Respondent No. 6: Mr. Aloke Kumar Ghosh, Sr. Advocate

Mr. Aniruddha Mitra

BEFORE:

The HON"BLE JUSTICE Tapen Sen

Date: 24th August, 2009

The Court: When this case was called out, Mr. Sudip Deb, learned Counsel appearing for the Petitioner Club stated that pursuant to the order

dated 14.8.2009, the Special Officer appointed by this Court namely, Mr. Ritabrata Mitra held a meeting with regard to the photographs to be

taken but since there was a suggestion being made at the instance of the Respondents that the entire Club be photographed, he therefore, raised a

doubt and stated that it was not clear to him as to how to carry out the order of this Court and therefore, he restrained himself till he received

further intimation from the parties in that regard. This Court does not understand as to why the parties created a dispute before the Officer of this

Court. From the order of the Special Officer (Building) at page 45 it is clear that the offending portion is all the structures that have been shown in

Part "B". The Special Officer has himself allowed the retention of structures in Part "A" and therefore, this Writ Petition is obviously concerned

with the structures of Part "B". Although this Court should have straightway refused to accede to such requests being made but nevertheless

considering the difficulties expressed by the Special Officer, this Court clarifies that the words ""areas in question"" used in the order 14.8.2009

means that the photographs that are to be taken should be in relation to those areas where constitutions have been raised and which were ordered

to be demolished and which have been indicated as Part "B" in the order of the Special Officer (Building) at page 45 of the Writ Petition. In view

of the order of this Court passed today, let the matter appear in the list on 14.9.2009. The interim order shall continue till 10.11.2009 as a number

of holidays intervene in between including the long vacation of this Court.

All parties including the Special Officer are to act on a Photostat signed copy of this order on usual undertakings.

(Tapen Sen, J.)

(Quoted)

On 16.9.2009, this Court passed the following Order:

WP No. 271 of 2009

IN THE HIGH COURT AT CALCUTTA

Constitution Writ Jurisdiction

ORIGINAL SIDE

Outram Club and Anr. Petitioners

٧.

Kolkata Municipal Corporation Respondents

BEFORE:

The HON"BLE JUSTICE Tapen Sen

Date: 16th September, 2009

The Court: Pursuant to the Orders passed by this Court the Special Officer, Mr. Ritabrata Mitra, appears and files a sealed envelope containing

some photographs. He is directed to number them and hand the same over to the Court Officer. The Court Officer shall then file a Report

indicating the total number of photographs filed. Mr. Ritabrata Mitra is requested to hand over a copy of each of the photographs to Mr. A.K. Das

Adhikari, to Mr. Aniruddha Mitra and also to Mr. Aloke Kumar Ghosh on payment of the expenditure incurred for printing such additional copies.

Mr. Ritabrata Mitra also files the Minutes of the visit to the Outram Club on 12th September, 2009 which is taken on record. Mr. Ritabrata Mitra

is directed to hand over copies of the said Minutes to the aforementioned three counsel within one week from today. Since the photographs and

the Minutes have been submitted, Mr. Ritabrata Mitra is therefore discharged from his status of a Special Officer in this case. He submits that he

has already been paid the necessary charges. In that view of the matter, he is discharged from all his obligation in this case. This Court records its

appreciation for the Special Officer for having assisted the Court.

In view of the fact that the business of the Court does not permit this case to be taken up this side of the Puja holidays, let the same therefore be

listed on the 28th of October, 2009.

Mr. Bhaskar Sen, a learned senior counsel of this Court appears and submits that his client namely, Mr. Birendra Kumar Roy is a co-landlord and

he should therefore be made a party in this Writ Petition so that he can adequately represent his case before this Court. He submits that he has also

got a decree against the Petitioners and/or declaration against them from a Civil Court of competent jurisdiction pertaining to illegal construction.

Be that as it may, since he has not been added as a party in this Writ Petition, it is desirable that they first file an application for impleadment of

parties which will be considered on its own merits on the next date of hearing.

All parties are to act on a photostat signed copy of this Order on usual undertakings.

(Tapen Sen, J.)

(Quoted)

On 19.4.2010, the following Order was passed:

WP No. 271 of 2009

IN THE HIGH COURT AT CALCUTTA

Constitution Writ Jurisdiction

ORIGINAL SIDE

Outram Club and Anr. Petitioners

٧.

Kolkata Municipal Corporation Respondents

For Petitioner: Mr. Ashoke Das Adhikari, Advocate

Mr. Sudip Deb, Advocate

For Respondent No. 4: Mr. Joy Saha, Advocate

Mr. Aniruddha Mitra, Advocate

For Respondent No. 7: Mr. Indranil Roy, Advocate

Mr. Arnab Mukherjee, Advocate

For K.M.C.: Mr. Aloke Kumar Ghosh, Advocate

Mr. Achinta Banerjee, Advocate

BEFORE:

The HON"BLE JUSTICE Tapen Sen

Date: 19th April, 2010

The Court: Photographs submitted by the Special Officer, Mr. Ritabrata Mitra were opened with the consent of all the Parties appearing at the

stage of hearing and they were perused by the Court. Opinion is reserved. It will be considered along with all pleadings including the

Supplementary Affidavit filed by the Petitioner objecting to some of the Photographs.

(Tapen Sen, J.)

(Quoted)

The Report/Minutes of the Special Officer which was filed before this Court is reproduced below:

Minutes of the visit of the Special Officer at the Outram Club on 12th

September, 2009

PRESENT: Mr. Reetobroto Mitra, Special Officer

Mr. Sudip Deb, Advocate appearing with Mr. Durga Das Banerjee, Advocate for the Petitioner- Dube & Co.

Mr. Meghojit Mukherjee, Advocate for the Petitioner

Mr. Sanjoy Goswami, President, Outram Club

Mr. Tapan Kumar Debnath, Secretary, Outram Club

Mr. Udayan Sen, Committee Member, Outram Club

Mr. Arindam Mitra, Advocate for the Respondent No. 6

Mr. Surata Roy in person-Respondent No. 6

Mr. Sanjoy Dhar, Architect on behalf of the Respondent No. 6

Mr. Ramesh Sinha Roy for the Respondent No. 6

Mr. Chandan Mukherjee, Photographer

As per the meeting held by the Special Officer on 7th September, 2009, the parties had met at the Outram Club on 12th September, 2009 at

11.30 a.m. to carry out the order of the Hon"ble Mr. Justice Tapen Sen passed on 14th August, 2009 and clarified upon the parties seeking to do

so on 24th August, 2009.

The portions to be photographed as part of the constructions and/or portion of the club indicated in page 45 of the petition as being a portion of

Part "B" were agreed and photographs taken.

In the process of taking the photographs, the parties engaged in serious altercations and disputes were once again raised as to what formed Part

"B".

All the photographs excepting those relating to the A.C. Shed marked in red hatch and the Committee Room have been seriously disputed by Mr.

Deb Mr. Deb submitted as follows:

Some of the photographs taken by the Photographer do not come under Part "B" as page 45 of the petition. He specifically points out that the

photographs relating to the lawn bar as also the photographs of Passage-cum-room which have been identified as AC Shed in the demolition

sketch plan as also the photograph of Committee room do not come under Part "B". Therefore, those photographs are not at all required to be

taken which are not the subject matter of the dispute. The photographs taken on some portions as pointed out hereinabove have already been

regularised by the Kolkata Municipal Corporation.

The private respondent points out that-

The Order of the Special Officer (Building) of the Kolkata Municipal Corporation refers to the demolition sketch plan and the map and plan of the

premises signed by both the owners and Outram Club to be read together and/or in conjunction with each other. So, the portions identified as Part

"A" and Part "B" are very clear and there could be no dispute about the same. The photographs which have been taken relate to Part "B". the

portions objected to by the counsel for Outram Club for which photographs have been taken certainly relate to Part "B". The private respondent

submits that no such regularisation has been admitted by the owners of the premises and the matter is under challenge in an appeal under Article

227 of the Constitution before this Hon"ble Court.

It is obvious from the aforementioned submissions by the parties that there are disputes even in identifying the parts and portions of the premises

being Part "B". However, as I have been directed by the Hon"ble Court to refer to page 45 of the Petition to ascertain the portions identified as

Part "B", I have done the same and taken the necessary photographs.

It may be pertinent to note here that in spite of notice, the Kolkata Municipal Corporation Authorities chose not to attend the meeting on 7th

September, 2009 and are also not present today.

(Reetobrato Mitra)

Special Officer

(Quoted)

32. The Report itself will show that the parties, even at the stage of photographs being taken pursuant to the Order of this Court, raised disputes

before the Special Officer and therefore no useful purpose will be served in dealing with the photographs which are kept with the records of this

case.

33. The Parties made detailed submissions with regard to their individual claims but, from the pleadings, the following pertinent facts appeared and

they are as follows:

1 21.6.91 Respondent No. 7 filed TS No. 942 of 1991 before the

learned City Civil Court (Vth Bench), Kolkata

2 1997 Civil Suit (CS No. 22 of 1997) filed by the Respondent

No. 6

3 21.12.2001 Order for inspection passed in WP No. 2521(W) of

2001

4 5.3.2002 Letter to Director General (Buildings) for Demolition

5 7.3.2002 Director General (Buildings) initiated action under

Section 400(1) of the KMC Act- (Demolition Case No.

532-D/2001-2002

6 18.3.2002 KMC filed an Affidavit in the High Court

7 15.9.1992 Order of injunction passed in TS No. 942 of 1991 by

the City Civil Court restraining the Petitioner club

and its men & Agents from making constructions

8 17.9.1992 Hon"ble Mr. Justice Bhaskar Bhattacharjee passed

an Order in WP No. 2521 (W) of 1997 directing

the KMC to conclude the Proceedings for Demolition

(Demolition Case No. 532-D/2001-2002) within TWO months

9 2003 Since there was non-compliance of the Order passed

on 17.9.1992, the Respondent No. 6 filed a Contempt

Petition which was registered as CC No. 94 of 2003

10 17.4.2003 In the Contempt Petition, the Corporation was

directed to strictly comply with the Order dated

17.9.1992 by 17.5.2003

11 8.5.2003 Consequently, the 1st Order was passed by the

Special Officer in Demolition Case No.

532-D/2001-2002

12 5.8.2003 The R/6 was aggrieved with the Order of part

retention and as such he filed WP No. 1594 of 2003

13 8.9.2003 WP No. 1594 of 2003 was disposed of as an Appeal

had also been filed by the Club against the Order

dated 8.5.2003 by which portions of the premises

had been Ordered to be demolished by giving him

liberty to approach the Tribunal and file a

Cross-Appeal

14 6.11.2003 Respondent No. 6 filed Cross Appeal before the

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15 9.6.2004 Respondent No. 6 then issued a Notice to the Club

terminating the right of the Club relating to

permissive possession arising out of the Agreement

16 19.7.2005 Order dated 15.9.1992 [Order of Injunction passed in

TS No. 942 of 1991 by the City Civil Court restraining

the Petitioner Club and its men & agents from making

constructions] was confirmed

17 10.1.2007 TS No. 942 of 1991 finally Decreed and it was

DECLARED that the Defendants (being the Club and it"s

the then President & the Secretary) have no right to

make any additions/alterations etc. in respect of the

tenanted premises. They were also restrained by an

Order of permanent injunction from making any

constructions/repairs/renovations etc.

18 4.12.2008 Impugned Order passed by the Tribunal upholding

the Order dated 8.5.2003 passed in Demolition

Case No. 532-D/2001-2002

34. Thus, from the perusal of the aforementioned facts and circumstances, it will be evident that the Petitioner undoubtedly suppressed, in the Writ

Petition, all facts pertaining to the Title Suit which was filed by the Respondent No. 7 on 21.6.1991 being T.S. No. 942 of 1991 which was

ultimately Decreed on 10.1.2007 and the Order dated 19.7.2005 which was passed therein confirming the Order dated 15.9.2002 of the City

Civil Court by which the Order of injunction had been passed restraining the Club and its agents and men from making constructions. The

Petitioners also suppressed the fact relating to CS No. 22 of 1997 which was filed by the Respondent No. 6 before this Court and also the fact

relating to the different Orders that were passed in W.P. 2521(W) of 2001 and specially, the Order dated 17.9.1992 passed by the Hon"ble Mr.

Justice Bhaskar Bhattacharya in that Writ Petition directing the Kolkata Municipal Corporation to conclude the Proceedings for demolition within 2

months and the subsequent Order passed in the Contempt Petition being C.C. No. 94 of 2003 on 17.4.2003 directing the Corporation to strictly

abide by the Order dated 17.9.1992 by 17.5.2003. It is pursuant to this Order that the first Order dated 8.5.2003 was passed by the Special

Officer in demolition case No. 532-D of 2001. These were necessary facts to have been pleaded by the Writ Petitioners but it appears that no

such statement was made in the Writ Petition. It is therefore, obvious that the Petitioners suppressed material facts before this Court. Had these

facts not been brought to the notice of this Court by the Respondents, the Court may have been misled.

35. Having perused the Order that was passed by the Special Officer, this Court noticed that on the basis of factuals brought to his Notice, he

correctly came to the conclusion that the demolition sketch plan, after having been compared with the map of the tenancy Agreement, contains

structures which were not part of the Agreement. The demolition sketch map showed rooms, air conditioned sheds, Bar, Pantry, Lady"s Rest

room, Lady"s cloak room, staff quarters, generator room, pantry, waste material store, sitting area etc. as well as some more areas which were not

in terms of the Agreement. The Club also did not produce any documents before the Special Officer justifying the construction of these structures.

According to this Court, when an Order of the Civil Court was granted restraining the Club and its men from making constructions as early as on

15.9.1992 and when the said Order was confirmed on 19.7.2005 and the Suit ultimately Decreed on 10.1.2007, the Club and its men and agents

owed a responsibility to the Special Officer to explain as to how such constructions had come up notwithstanding the Order of restraint having

been passed by the Civil Court. The relevant portion of the Order of the Special Officer is relevant to be quoted and the Order reads as follows:

The agreement provided for (i) to improve and modify an existing external pavillion along with the western side of the premises to include dressing

room, toilet and mali"s room of stated dimensions (see map and page 12 of the agreement). (ii) to construct a raised covered passage, an open

verandah, to serve as a reception area-cum-passage of dimensions stated in the plan along with Northern face of the building (see map and page 5

of the agreement). These have been in place since 1982 and the Assessment records of 1992 would reflect this very clearly. The demolition plan

submitted to the Hon"ble High Court compares the records of 1992 with the structures standing at present and correctly records the entirety of the

structures as unauthorised. The external pavilion together with toilet an dressing room and (supposed malis room on the western side has been

expanded in size way beyond the stated dimensions in the plan attached to the agreement, and the pavilion itself has been converted into a bar. It is

an exactly similar matter to the open verandah on the Northern face, which has been covered up and converted into air-conditioned rooms.

Besides all these widespread illegal constructions have been made on the Western, Northern and Eastern sides of the Tennis Lawn as well as (inter

alia) on the North-West side of the main building which has been sufficiently detailed in the department's demolition plan.

(5) Photocopies of the Clubs reports of 2001 and 2002 have been submitted showing total sales of Rs. 50.61 lakhs for the Bar Account in 31st

March, 2002 and the provisions account Rs. 32.47 lakhs. The Tennis account had income of Rs. 0.73 lakhs.

(6) The illegal and unauthorised construction have led to the amenities of the premises as a whole being severely and seriously disestablished and is

causing continued widespread damage, both external and internal to the main building.

(7) The unauthorised construction have been made without permission of the owners of the premises and without any statutory permission from the

CMC which are entirely illegal.

The demolition sketch plan vide D/Case No. 532-D/2001-02 has been compared with the map of the tenancy agreement. The map is furnished in

the agreement of the tenancy dt. 28th June, 1982 duly signed by both the sides. The demolition sketch contains structures which are not shown in

the agreement plan. Some spaces in the agreement plan are not denoted by any letter which speaks about no structures in those spaces. The

demolition sketch plan shows room, A.C. shed, Arch Shed, Bar, Pantry, Ladies Rest Room, Ladies cloak Room, Tennis Pantry, Waste Material

Store, Generator Room, Staff Quarter, Sitting area. Obviously some more areas have been constructed which are not as per the terms of

agreement. The Club has not proceed any document justifying the construction of the structures which are not covered in the agreement plan. The

club may be permitted to retain only those structures of the demolition sketch which are permitted in the agreement and duly shown in the

agreement map signed by both the sides.

(Quoted)

36. The Appeal that was taken out before the Tribunal was returned with a finding that the said Appeal was not tenable and liable to be dismissed.

Such a finding, in the opinion of this Court having been based on the following paragraphs, in the opinion of this Court, was correct and no error

can be attributed to the Tribunal in coming to such a conclusion. The said paragraph reads as follows:

Over the aforementioned facts and circumstances and judicial decision of the Superior Courts, we find no illegalities in ordering not to

demolish"/"retention" under the impugned order of So (B) (Part "A"). But at the same time we find no cogent ground/substances over the

submission of the appellant towards the retention of the other parts of the construction under Part "B" (subject matter of the appeal). It is

mentioned that not a single scrap of paper furnished by the appellant towards existence of the same that they have simply undergone repairing and

renovation work. Moreso, Appellant being a tenant (accepted even for argument sake) have no right to construct and/or change the nature and

character of tenancy without prior permission of the Landlord/Owner. No permission was also obtained from KMC. Respondent No. 3 being a

complainant $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A}_{\dot{c}}$ landlord also raised his objection from the very beginning as to their inconveniences and changes by the alleged construction.

Accordingly judicial references made by Appellant under AIR 1972 (Cal) 459, 1989 (SC) 860 has no relevancy since there are objections and

sufferings of the other complainant-landlord by the impugned construction. As to the cited decision of a judgment of this tribunal under B.T. Appeal

No. 45 of 2003 we are to mention that the facts and circumstances of the earlier case are altogether different from the present case where

permission for construction was granted by the major number of co-owners. But in the present case there is no such permission was even obtained

at all from the Landlords or KMC and thus citation is not relevant.

Summing up everything, in absence of any cogent document, we thus hold the view that the grounds under the appeal are not tenable and liable to

be dismissed.

(Quoted)

37. On the claims of the respective Respondents with regard to their claim to the property was rightly not considered by the Tribunal by saying that

it had no power like the Civil Court. It correctly therefore confined the Appeal only to the extent of the subject matter of the Order that was

passed by the Special Officer (Building) and on the basis of the facts and circumstances taken into consideration herein and as mentioned above,

rightly dismissed the Appeal on contest.

38. Considering the aforementioned facts and circumstances, this Court is of the view that none of the two Orders passed either by the Special

Officer (Building) or the Municipal Building Tribunal on 8.5.2003 and 4.12.2008 in so far as they relate to the Order of demolition, deserve to be

set aside by this Court as they do not suffer from any irregularity.

The Writ Petition is dismissed. No Order as to costs.

Upon appropriate Application(s) being made, urgent Certified copy of this Judgment, may be given/issued expeditiously subject to usual terms and

conditions.

Later:

Stay of operation of this Judgment/Order is sought for. Such prayer is refused.