Sunil Kumar Mukherjee and Others Vs Commissioner, South Dum Dum Municipality and Others

Court: Calcutta High Court

Date of Decision: Dec. 24, 1973

Acts Referred: Constitution of India, 1950 â€" Article 226
West Bengal Land Development and Planning Act, 1948 â€" Section 10(2), 2(a), 4, 6

Citation: 78 CWN 494

Hon'ble Judges: S.C. Deb, J; A.C. Gupta, J

Bench: Division Bench

Advocate: A.K. Das and N.C. Bhattacharya, for the Appellant;Panchanan Paul, A.P. Chatterjee and D.P. Mazumdar for Respondents Nos. 1 and 2, Gopal Chakrabarty and Rathindra Nath Bhadury for Respondent No. 4, B.C. Basak and Malay Kumar Basu for Respondent Nos. 5 and 6, for the Respondent

Judgement

Deb, J.
This appeal is directed against the judgment and order dated August 16, 1971 of Mr. Justice P.K. Banerjee discharging the Rule

obtained by the appellants under Article 226 of the Constitution. The appellants are the members of respondent No. 4, Krishnapur Refugee Co-

operative Colony Limited, hereinafter, referred to as the Society. On December 21, 1951 the Society entered into an arrangement in writing with

respondent No. 5. The State of West Bengal, to execute a scheme, under the provisions of The West Bengal Land Development and Planning

Act, 1948, for developing the scheme-lands and to sell those lands in different allotments to the individual allottees as freehold at a price to be fixed

with the approval of Respondent No. 5 who undertook to make over possession of the scheme-lands to the Society before the execution of

necessary deeds and to execute those deeds for effectually vesting those lands in the Society. The said lands are situate within the municipal limits

of the South Dum Dum Municipality, hereinafter referred to as the Municipality.

2. On December 22, 1951. the respondent No. 5 made a declaration in relation to those lands u/s 6 of the aforesaid Act and, after notifying the

said lands u/s 4 of the said Act, made over possession of those lands to the Society. The above declaration u/s 6 of the said Act having been held

to be unlawful by this Court the respondent No. 5 issued a fresh declaration which is still under challenge in a different proceeding in this Court.

3. In the mean time, the Society developed those lands and allotted them to its 533 members in separate allotments upon payment by them the

provisional prices for those lands and issued Certificate of allotment in their favour. All these members are in possession of their respective plots

and most of them have erected buildings thereon and are residing in those buildings. The respondent No. 5, however, has not yet executed any title

deed in favour of the Society in view of the pendency of the proceeding mentioned earlier.

4. On December 1G, 1969, the respondent No. 3, the assessor of the Municipality, served notices u/s 134 of the Bengal Municipal Act 1932,

hereinafter referred to as the Municipal Act, on all those members of the Society in the following terms:--

For the purpose of preparing the revised valuation list of holding, take notice that u/s (sic)34 of the Bengal Municipal Act, 1932, you are hereby

required to furnish the undersigned within seven days from the receipt of this notice a true and correct return of the rent or annual value of your

holding and a true and correct description of the same in Form B attached hereto.

In case of default you shall be liable to fine which may extend to twenty rupees and a further daily fine of not exceeding five rupees for each day

during which you shall fail to furnish the return.

5. On December 24, 1969, the respondent No. 2, the Chairman of the Municipality, also served notices u/s 144 of the Municipal Act on all those

members requesting them to comply with the provision of that section within seven days on the ground that the Society had transferred the scheme-

lands in their favour and those transfers were not notified to the Municipality by the Society and its members within the prescribed time. They were

also told that proceeding would be instituted against them under the provisions of the Municipal Act if they fail to act in terms of those notices.

6. In reply to the above notices u/s 144 of the Municipal Act the appellants, by their letter of January 9, 1970, requested the respondent No. 2 to

withdraw and cancel those notices, inter alia, alleging therein: ""That there has been no transfer of title of the scheme-land primarily liable for

payment of rates or otherwise to the society and there has been also no transfer of title of such lands or any part thereof to the members of the

society"" and ""that the elements or ingredients necessary to bring the alleged holding within the mischief of section 144 of the Bengal Municipal Act,

1932, are absent and as such ""those notices were issued illegally and without jurisdiction by the respondent No. 2.

7. The respondent No. 2, however disputed the above allegations in his letter of January 24, 1970, and then the appellants by their letter of

February 3, 1970, asked the respondent No. 3 to withdraw and cancel those notices issued u/s 134 on the grounds alleged by them in their letter

of January 9, 1970, addressed to the respondent No. 2 and without waiting for its reply they obtained the above Rule challenging those two

notices and having failed in the trial court have come up before us on appeal.

8. In discharging the said Rule, Banerjee, J., inter alia, held that the Society having transferred those lands to the appellants they are the owners of

those lands and buildings within the meaning of section 3 (38) of the Municipal Act and their holdings are the holdings within the meaning of section

3 (21) of the said Act and therefore the impugned notices were issued in accordance with law.

9. We propose to dispose of here a point sought to be raised by Mr. A.K. Das, learned counsel for the appellants, before going into the merits of

this appeal. He urged that the appellants are not liable to pay any rates for ""they are not required to use the Municipal Road"" and ""are not enjoying

any Municipal amenities"" as alleged in paragraph 6 of the petition but those allegation are denied by the first three respondents in their affidavit and

therefore we cannot decide those disputed question of fact.

10. Now to appreciate the contention of Mr. Das it is necessary to set out below the relevant provisions of the Municipal Act:--

(The texts of Sections 3(21), 3(36), 3(38) 123(1) (a), 129,132, 133, 134, 140, 144 of the Bengal Municipal Acts 1932 quoted in extenso in the

judgment are omitted).

* * * * *

11. It has been argued by Mr. Das that there is no agreement between the appellants and the Society in relation to the lands in their respective

possession and therefore those lands held by them are not holdings within the meaning of that expression used in section 3(21) of the Municipal

Act. But, Mr. Malay Kumar Basu, the learned Advocate for the respondent No. 5, rightly pointed out to us that it is not the case of the appellants

that there is no agreements between the Society and the appellants as contended by Mr. Das. Mr. Basu further drew our attention to a few

admitted facts namely that the appellants are in possession of those lands and that after erecting buildings thereon they are residing in those

buildings. It is not their case that they are not the owners of those buildings. It is also not their case that those buildings were erected by them

without the sanction of the Municipality. The Act enjoined them to apply for such sanction in the prescribed form which in its turn shows that they

were to apply for such sanction as owners of the land.

12. The above facts and the circumstances, pointed out by Mr. Basu lead to the irresistible inference that there are agreements between the

Society and the appellants in relation to those lands and in pursuance of those agreements the appellants are holding those lands and those

Certificates of allotment were issued in their favour by the Society pursuant to those agreements. Their respective lands are also ""surrounded by

one set of boundaries"" as described in their Certificates of allotment. For all these reasons we hold the lands held by them are holdings within the

meaning of that expression used in section 3(21) of the Municipal Act.

13. It was then argued by Mr. Das that the appellants are not the owners of those lands because they have no legal title to those lands and the

expression ""owner"" used in section 3(38) of the Municipal Act means a legal owner and it includes only the agents, trustees and the receiver of

such legal owner.

14. But, section 3(38) has extended the meaning of the word ""owner"" and has brought within its scope and ambit all persons who are for the time

being receiving the rents of any land or building on their own account or as agents or trustees for any other person or society or for any religious or

charitable purpose or as a receiver or any person who would so receive such rent if the land or building were let out to a tenant. It is well

established that the agents and the receivers are not the owners of any property and yet this definition has made them owners for the purpose of

the Municipal Act, Further, the expression ""..... any person receiving the rent.... on his own account"" used in this section cuts at the root of the

contention of Mr. Das and hence we overrule it. Furthermore, it is not their case that they are not the owners of those building. There is, therefore,

no merits in the contention of Mr. Das.

15. Mr. Das also argued that the appellants are not the occupiers because they neither pay any rent to the Society nor they are liable to pay any

rent to the Society. But the expression ""occupier"" in section 3(36) of the Act ""Includes an owner living in or otherwise using his own land or

building....."" Hence, the appellants are also the occupiers of those lands and buildings because they are living in their own buildings and as

held earlier they are also the owners of those lands for the purpose of the Municipal Act.

16. Me have already held that the lands held by them are holdings within the meaning of the expression ""holding"" as defined by section 3(21) of the

Municipal Act. We have also held that the appellants are the owners of those holdings for the purpose of the Municipal Act. It is therefore, not

necessary to discuss the cases cited at the Bar on the meaning of the expression ""owner"" and ""holding"".

17. Mr. Das, then urged that u/s 129(b) of the Municipal Act it was incumbent of the Commissioners to decide the disputes raised by the

appellants regarding their title to those lands and the Commissioners not having done so the respondent No. 3 had no jurisdiction to issue those

notices u/s 134 of the Act. But, the appellants did not raise any such dispute before receiving those notices and, moreover, section 129(b) of the

Act is solely confined to a dispute regarding the ""class of ownership"", that is to say, a dispute regarding the gradation of ownership and the

appellants not having raised any such dispute, this contention of Mr. Das has no merits.

18. His next contention was that the respondent No. 3 had no jurisdiction to issue those notices u/s 134 of the Municipal Act because the

Commissioners did not decide to impose any rates on those holdings u/s 133 of the Municipal Act. But, Mr. Das is not entitled to raise this

contention because no such case has been made either in the petition or in the affidavit-in-reply. Further, it is not the decision of the Commissioners

u/s 133 but section 134 of the Act which confers jurisdiction on the respondent No. 3 to issue those notices for it says that the assessor, wherever

he thinks fit, may call upon the owners or the occupiers of the holdings to furnish the particulars set forth therein including such other particulars as

he ""may direct"" for the purpose of preparation of the valuation list and therefore it cannot be said that those notices were issued unlawfully or

without jurisdiction by the respondent No. 3.

19. The unit of assessment is the holding under the Municipal Act. An owner, within the meaning of this Act, is primarily liable to pay the rates on

the holding u/s 132 of the Act and when one person is the owner of the house and another person is the owner of the land on which such house

stands ""the Commissioners"", u/s 140(1) of the Municipal Act, ""may treat such house and land as a single holding and assess them to rates

accordingly"" and the owner shall pay in such a case the ""total amount of such rate or rates"" is what section 140(b) of the municipal Act says.

20. The appellants are both owners and occupiers of those lands and buildings for the purpose of the Municipal Act and those lands held by them

being holdings, as held earlier, respondent No. 3 had jurisdiction to serve those notices u/s 134 of the Municipal Act on them and those notices

having been lawfully issued, the appellants were bound to comply with those notices.

21. The next submission of Mr. Das on the notices u/s 144 of the Municipal Act is as follows : This Act is, both a fiscal and a penal statute for it

authorise the Commissioner to impose rates on holdings and section 500 of the Act imposes penalties on the owners and occupiers for their

noncompliance with the notices served on them u/s 144 of the Act. Section 3(2) of the Act, inter alia, says that ""building includes a house"". Section

3(21) as far as it material for our purpose, says that holding means ""land held under one title"". Section 3(27). amongst other things, says that land

''includes things attached to the earth"". A building being attached to the earth is ""land"" within the meaning of that expression. Section 144

contemplates a divided ownership of land and building. Hence, the expression ""title to or over any land or building"" used in section 144 of the Act

is vague and ambiguous and therefore this expression should be strictly construed against the Municipality and in favour of the appellants on the

principles laid down by the House of Lords in the case of (4) Inland Revenue Commissioners v. Ross & Coulter, reported in (1948) 1 All. Eng.

Rep. 616 at p. 620, and by the Supreme Court in the case of the (10) State of Punjab Vs. Jullunder Vegetables Syndicate, of the report.

22. But, in our opinion, the words ""title to or over any land or building"" used in section 144 of the Act must be construed with reference to their

context and in conformity with the spirit of the Act. In his article on Interpretation of English and Continental Law published in November 1927

issue of the Journal of Comparative Legislation, Prof. H.A. Smith says this:--

Words are only one form of conduct, and intention which they convey is necessarily conditioned by the context and circumstances in which they

are written and spoken. No word has an absolute meaning for no word can be defined in vacus or without reference to some context.

23. In the case of (2) Brett v. Brett, reported in (1826) 3 Add 210 at p. 216 of the report and affirmed in (1827) 3 Russell, Sir John Nicholl, M.R.

said as follows:

The key to the opening of every law is the reason and spirit of the law;.....Hence, to arrive at the true meaning of any particular phrase in

a statute, the particular phrase is not to be viewed detached from its context in the statute; it is to be viewed in connection with its whole context.

24. Then in the case of (9) Rein v. Lane, reported in (1867) 2 Q.B. 144 at p. 151 of the report, Lord Blackburn says this:--

It is, I apprehend, in accordance with the general rule of construction that you are not only to look at the words, but you are to look at the context,

the collection and the object of such words relating to such matter, and interpret the meaning according to what would appear to be the meaning

intended to be conveyed by the use of the words under the circumstances.

25. And speaking for the Board in the case of (3) Canada Sugar Refining Co. v. V.R., reported in 1898 App. Case 735 at p. 741, Lord Davey

pronounced this:--

Every clause of a statute should be construed with references to the context and other clauses in the Act, so as, as far as possible, to make a

consistent enactment of the whole statute or series of statutes relating to the subject-matter.

26. And finally, in the case of (8) Pandit Ram Narain Vs. The State of Uttar Pradesh and Others, of the report, on the question of interpretation of

a fiscal and penal statute of the nature as is before us, the Supreme Court said this:--

The meaning of words and expression used in an Act must take their colour from the context in which they appear.

27. These highest authorities lay down that the Court must look to the context in which the words are placed to ascertain the intention of the

Legislature and once the legislative intent is thus ascertained the Court is bound to give effect to it irrespective of the question as to whether it

operates harassingly on the citizen or not. In (7) Newby v. Sims, reported in (1894) 63 L.J.M.C. 229 of the report Day, J. says:--

I cannot concur in the contention that because these acts impose penalties, therefore, their construction should, necessarily be strict. I think that

neither greater nor less strictness should be applied to those than other statutes.

28. And, to clear up the confusion caused by the incorrect application of the rule of strict interpretation of fiscal and penal statute, this observation

of Day, J. has been quoted with approval by the Supreme Court in the case of (5) M.V. Joshi Vs. M.U. Shimpi and Another, of the report.

Hence, we cannot accept the contention of Mr. Das that justice requires us to depart from this well-established rule of interpretation of all statutes

laid down by the highest authorities. It is true that a citizen will not be liable to pay a tax nor shall be punished for any offence if he is not within the

letters and the spirit of the statute but this does not mean that the court by a charitable interpretation will assist him to evade the law and avoid the

consequences of evasion.

29. Further, in our opinion, Section 144 of the Act has been introduced in the Municipal Act with the object and purpose of protecting the interest

of the Municipality so far as the realisation of the rates is concerned. We are unable to construe this section in the manner suggested by Mr. Das

for it would defeat the main purpose and object for which this section has been introduced in the Act namely to protect the interest of the

Municipality and therefore the principles laid down by the House of Lords and the Supreme Court in the cases relied on by Mr. Das have no

application as far as the interpretation of section 144 of the Municipal Act is concerned.

30. He then argued that the expression ""title to land"" in section 144 means the legal title to the land and there-being no transfer of such legal title to

the appellants, those notices, u/s 144, were issued by the respondent No. 2 without jurisdiction. But it appears to us from the relevant sections of

the Municipal Act quoted earlier and the context in which the expression ""title to land"" occurs that it must include not only the legal title to the land

but also the possessory title to the land; any other meaning will lead to an incongruity of the gravest nature for no effect can be given to the

expression ""owner"" as defined by section 3(38) of the Act. If the Municipal Act were only concerned with the legal title to or over the land then

these words ""the person for the time being receiving the rent of any land or building.... whether on his own account or as agent or trustee for any

person or society or for any religious or charitable purpose, or as a receiver or who would so receive such rent if the land or building.....were let

out to a tenant"" would not have been there in that section. Section 3 (38), as said earlier, has enlarged the scope and ambit of the term ""owner"" for

the purpose of the Municipal Act and therefore to construe Section 144 in the manner suggested by Mr. Das is to frustrate the very object and the

purpose for which this section has been introduced in the Act. Further, it is our duty to construe the provisions of this Act in a manner to make

them harmonious so that they carry out the purpose of the Act.

31. One of the meanings of the expression ""title to land"" is ""a party"s right to the enjoyment thereof"" as stated in the Law Dictionary of Mosley &

Whiteley (4th Edn.) at p. 321. A right to enjoy the land must reasonably include a right to enjoy its usufruct including the rents. Moreover, the

expression ""person.....who would so receive such rent if the land.....were let out to a tenant"" used in section 3(38) of the Municipal Act, in our

opinion, clearly indicates that the person who is not a legal owner but only a trustee or an agent or a receiver will also be the owner of the land for

the purpose of Municipal Act if he, for the time being, is entitled to receive the rent of the land. A person in permissive possession of the land,

unless he is precluded by his contract, is entitled to let out the land to a tenant and hence he will also be the owner of the land within the meaning of

that expression used in section 3(38) of the Municipal Act. Therefore, in our opinion, the expression ""title to land"" used in Section 144 of the Act is

not confined solely to the legal title to the land but it also includes the possessory title to the land for the purpose of the Municipal Act.

32. On this aspect of the matter it was also argued by Mr. Das that section 144 of the Municipal Act has no application in the facts and

circumstance of the case because no person was ""primarily liable for payment of rates on"" those lands. He contended that a cooperative society

registered under the Bengal Co-operative Societies Act, 1940 is a public authority for the purpose of writ petitions under Article 226 of the

Constitution as held by Laik, J., in the case of (6) Madan Mohan Sen Gupta and Another Vs. State of West Bengal and Others, . Hence,

according to Mr. Das, a co-operative society registered under the relevant statute being a public authority is also a ""local authority"" and a ""local

authority"" is exempted from payment of rates under the Municipal Act.

33. Mr. Das also contended that a co-operative society is not a ""Company"" within the meaning of the indian Companies Act, 1956, and therefore,

this Society registered under the Bengal Co-operative Societies Act, 3940, is a ""local authority"" and hence it was not ""primarily liable for payment

of rates on"" these holdings and the transfer of these holdings by the Society to the appellants is out side the mischief of Section 144 of the

Municipal Act.

34. In this connection he also contended that the respondent No. 5 having empowered the Society to execute the said scheme at its own cost u/s

10(2) of the West Bengal Land Development and Planning Act, 1948, it must be held that the Society is a ""local authority"" and not a ""Company

under the provision of The West Bengal Land Development and Planning Act 1948 and therefore the transfer of those holdings in favour of the

appellants by the Society was not required to be notified u/s 144 of the Municipal Act because the Society was not at all liable to be rated on these

holdings.

35. Mr. Panchanan Pal, learned Advocate appearing for the first three respondents, drew our attention to the relevant provisions of the Co-

operative Societies Act and contended before us that the Rules and Bye-laws framed under that Act constitute an agreement between the

members inter se of the Co-operative Society and also an agreement between its members and the Co-operative Society. He urged that merely

because the State Government and the Registrar appointed under that Act exercise some control over the Cooperative Society registered under

the said Act the Society cannot be called a public authority even for the purpose of writ petitions under Article 226 of the Constitution. On this

point he, relied on a decision of Pal, J. in the case of (1) Borjahan Khan Vs. 24-Parganas Southern Co-operative Bank,
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36. Though there is much force in the contention of Mr. Pal, it is not necessary for us to resolve this conflict between these two decisions in this

appeal because, in our opinion, a co-operative society registered under the Cooperative Societies Act is definitely, not a ""local authority"". A co-

operative society is not a ""company"" under the provisions of the Indian Con panics Act but it is a ""Company"" and not a ""local authority"" for the

purposes of The West Bengal Land Development and Planning Act 1948 because section 2(a) of the said Act says that the expression ""Company

shall have the same meaning as given in The Land Acquisition Act, 1894 which on its turn says that the expression ""Company"" includes a society

registered under the Co-operative Societies Act 1912 or any other law relating to Co-operative Societies for the time being in force in any State

and it is an admitted fact that this Society has been registered under the Co-operative Societies Act for the time being in force in this State.

Moreover, section 3 (23) of the The Bengal General Clauses Act, 1899 does not include a co-operative Society within the meaning of the term

local authority"", and hence there is no merit in the contention of Mr. Das. The possessory title to those lands vested in the Society inasmuch as the

respondent No. 5 transferred its possessory title to the scheme-lands in favour of the Society. And, as held earlier, the possessory title to land is

also included within the scope and ambit of the expression ""title to land"" used in section 144 of the Municipal Act and the person in possession of

the land by virtue of such possessory title is the owner of the land for the purpose of the Municipal Act. Hence, the Society was ""primarily liable for

the payment of rates on"" those lands and those lands having been transferred by the Society to its members including the appellants it must be held

that suction 144 of the Municipal Act directly applies to the instant case before us. Therefore, it is not possible to accept the contention that the

said notices u/s 144 of the Municipal Act were issued without jurisdiction by respondent No. 2.

In this view of the matter, this appeal must fail and is dismissed with costs.

Gupta, J.

I agree.