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APO No. 181 of 2016
GA No. 1872 of 2016
with
WP No. 327 of 2016

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

RAMESHWAR PROPERTIES PRIVATE LTD.
Versus
STATE OF WEST BENGAL & ORS.

BEFORE:
The Hon'ble JUSTICE SANJIB BANERJEE
And
The Hon'ble JUSTICE KAUSIK CHANDA

Date : January 28, 2020.

Appearance:
Mr. Dhruva Ghosh, Sr. Adv.
Ms. Vineeta Meharia, Adv.
Mr. Pushan Kar, Adv.
Mr. Sagnik Majumdar, Adv.
Ms. Madhurima Haldar, Adv.
Mr. J. Das, Adv.
..for the appellant

Mr. Alok Kr. Ghosh, Adv.
Mr. Gopal Chandra Das, Adv.
..for the KMC

Mr. Naba Kumar Das, Adv.
..for the State

The Court : The appeal arises out of an order of May 13, 2016 by which a writ petition for determining the appropriate occupation charges payable by the Kolkata Municipal Corporation to the writ petitioner company has been dismissed on the ground that upon a previous contempt petition being dropped, the writ petitioner company had no further cause of action to pursue the subsequent action.

The matter pertains to a property at Ripon Street. Acquisition proceedings were initiated at the behest of the State or the Corporation, but they lapsed. Fresh acquisition proceedings were thereafter initiated and it is not in dispute that the land and the building standing thereon have been acquired. It is equally irrelevant whether compensation for the acquisition has been paid or such matter has yet to attain finality. The present proceedings are confined to the period between January 20, 2000 and December 15, 2013. The gazette notification for the fresh acquisition under Section 4(1) under the Land Acquisition Act, 1894 was published on February 16, 2013.

An earlier writ petition, W.P. No. 1605 of 2003, was brought to this Court with the principal prayer being for a declaration that the acquisition proceedings – LA Case No. Act-1/9/99 – in respect of premises no. 42, Ripon Street, Kolkata had lapsed by efflux of time in terms of Section 11A of the Act of 1894. This Court found that such earlier acquisition proceedings had lapsed and it was observed in the order dated June 26, 2012 as follows:

“Since the proceedings for the acquisition of the land lapsed, and the respondents incurred an obligation to give the petitioners possession of the property, the petitioners are entitled to occupation charge for the period from January 20, 2000 till the date of delivery of possession. The occupation charge has not been determined, and I think it will be appropriate to direct the Collector to determine the occupation charge payable from January 20, 2000.”

Such order of June 26, 2012 was carried in appeal by the Corporation. The appeal was disposed of by an order of March 25, 2015 upon the Appellate Court noticing that the “Collector was to determine the occupation charges payable from 20th January 2000 onwards.” The impugned order was not interfered with. Further, the submission on behalf of the appellant therein was also recorded to the following effect:

“... Learned Additional Advocate General also informs the Court that the amount payable as rent up to a day prior to declaration under Section 4 under the occupation charges from 20th January, 2000 to 22nd December, 2013 be determined by the collector and paid within two months from date.”

The appeal was disposed of “in the light of such submission”.

Since no determination of the occupation charges came to be made by the Collector within any reasonable time, the writ petitioner company instituted contempt proceedings. By an order dated August 3, 2015, the contempt petition – CC No.131 of 2015 – was disposed of without any liberty or leave being reserved in favour of the petitioners and by dropping the contempt proceedings. However, the following passage from the order dated August 3, 2015 has been placed on behalf of the appellant:

“...However, there is no basis how the amounts are arrived at, but at this stage the same is furnished by learned Senior Counsel ... appearing on behalf of respondent no.1. We direct the respondent no.2 also to furnish on the other hand information and details.”

The information and details furnished pursuant to such direction came in the form of a document which appears to be dated July 20, 2015. The calculations furnished in such document were for the occupation charges in respect of premises no.42, Ripon Street for the period January 20, 2000 to December 15, 2013. According to such document, rent in respect of the property was fixed at Rs.6.28 per sq.ft per month on the basis of the rate of rent at such time in respect of comparable premises at 8B, Lindsay Street for the period upto April 29, 2013. Upon enhancing the rate 20% with effect from April 30, 2013, the rent for the remaining period was paid at Rs.7.54 per sq.ft per month.

Immediately upon receipt of the calculations, the appellant sought to protest the basis therefor and this subsequent writ petition was filed with a prayer for

the occupation charges till the publication of the subsequent notification under Section 4(1) of the Act of 1894 to be paid.

On behalf of the Corporation, it was contended before the writ Court that since the contempt proceedings, which came to be instituted to ensure compliance with the previous appellate order of March 25, 2015, were dropped without granting any liberty or leave to the petitioners therein, the writ petitioner had no further cause to pursue. It is the further case of the Corporation in this appeal that the subsequent writ petition was for an order for determination of occupation charges when the payment on such account had been unreservedly received as recorded in the order passed in the contempt proceedings.

Ordinarily, when an order for the payment of money is passed in proceedings under Article 226 of the Constitution, a subsequent writ petition can be brought to ensure compliance with the previous direction or a contempt petition may be filed since such a procedure has been recognised as an equitable mode of execution. There is substance in the Corporation's assertion that when the contempt proceedings had been instituted for the perceived non-compliance of the order of the Single Bench as it merged in the appellate order of March 25, 2015, and the contempt proceedings were dropped, it would imply that the Court was satisfied that the order had been complied with; whereupon the contempt proceedings were dropped. It must be conceded that conventional wisdom would find no flaw in such argument. However, when a civil court passes a money decree and the same execution is levied, the execution proceedings may be dropped upon the executing court finding the decree to have been satisfied. Even here there is a formality of the satisfaction of the decree being entered. As long as the satisfaction of the decree is not entered, repeated execution proceedings can be instituted, subject to the laws of limitation, to enforce the decree and realise the decretal amount.

There is no codified procedure for enforcing orders passed in the writ jurisdiction. Years of practice have led to subsequent petitions being filed or contempt proceedings being instituted for the purpose of enforcement. But just as the laws of limitation do not apply to the substantive claims made in proceedings under Article 226 of the Constitution, it should be the endeavour of every Court exercising such jurisdiction to ensure that substantive justice is done; the object of the exercise being to ascertain whether the relief granted earlier has been obtained, not idle obeisance to technicalities. It is true that the appellant, in the present case, ought to have reserved its right and sought and obtained appropriate leave from the Court at the time that contempt proceedings were disposed of. Ideally, the appellant herein should have requested the Court not to dispose of the contempt proceedings without the break-up being looked into. However, the fact that the contempt proceedings were disposed of and the implication thereof being that the relevant order had been complied with, will not stop a subsequent writ Court to ascertain whether substantive justice was done. After all, if a person was found entitled to a relief, the Court ought to reach the relief to such person unless he abandons it.

The object of the original order as affirmed in appeal by the order of March 25, 2015, was that there would be a determination of the occupation charges for a particular period of time. It is the usual business of the Collector to undertake such determination. A determination, by itself, implies a form of assessment. When there are two parties to a dispute and a determination is directed, it goes without saying that the determination has to be undertaken upon notice to the parties who are likely to be affected by the outcome. Determination implies an application of the mind to the matters in issue; and there can be no matter in issue unless there is a second side which is invited to participate in the process of adjudication that a determination necessarily calls for.

The Corporation is quick to demonstrate that by a notice of July 15, 2015, the LA Collector in this case had invited the appellant to depute its representative on July 22, 2015 when measurements would be taken at the premises in question. The Corporation says that upon the appellant herein not having deputed any representative to participate in the process, the appellant can no longer be heard to complain that there was no adjudication or the determination undertaken by the Collector was without notice to the appellant.

First, the notice of July 15, 2015 was limited to measurements being taken. The physical aspect of taking measurements may not require any adjudication or assessment of anything and the appellant may have chosen to stay away from the process. However, that would not disqualify the appellant from participating in the process of adjudication which ought to have followed upon the measurements being taken. After all, it is evident from the calculations furnished by the LA Collector that the rent of premises no.42, Ripon Street was assessed on the basis of a seemingly comparable property at 8B, Lindsay Street. As to whether the property at 8B, Lindsay Street was comparable to the 42, Ripon Street property or not could not have been decided conclusively without the appellant herein, who was to be affected by the outcome of the assessment, being informed of such fact or being given notice in such regard. There does not appear to have been any notice issued to the appellant subsequent to July 15, 2015 and the real business-end of the assessment or adjudication necessary for the determination of the occupation charges in accordance with law may have been conducted in the appellant's absence and without the appellant having any knowledge thereof.

Secondly and more importantly, the calculation-sheet which appears to be dated July 20, 2015 suggests that the calculations may have been hurriedly arrived at without even the measurements being taken. If such was the case, there was no

meaningful determination and the entire exercise was a farce. Once such facts come to the notice of a writ Court, it would not condone such conduct or allow statutory authorities to function in such arbitrary manner.

In essence, what is evident from the calculations furnished by the LA Collector is that there may not have been any appropriate application of the mind to the matters in issue. Thus, the act of determination that the order of March 25, 2015 required the Collector to undertake may not have been performed. Once such glaring fact is brought to the notice of a Court exercising authority under Article 226 of the Constitution, the minor matter as to a previous contempt petition having been disposed of without any liberty being reserved unto the petitioner makes little or no difference.

It is true that some money was paid on account of occupation charges to the appellant herein as recorded in the order of August 3, 2015; but the money that was paid was not the occupation charges that had been required to be paid upon due determination thereof in accordance with law. The present writ petition has to be read as one for the due determination of such occupation charges: the exercise that was left incomplete by the Collector.

For the reasons aforesaid, the appeal succeeds. The judgment and order impugned dated May 13, 2016 are set aside and the writ petition stands allowed to the extent indicated hereinbelow.

APO No.181 of 2016 and GA No.1872 of 2016 are allowed by directing the concerned LA Collector to undertake the exercise of determining the occupation charges at premises no.42, Ripon Street, Kolkata for the period January 20, 2000 to December 15, 2013 in accordance with law and upon due notice to both the appellant herein and the Kolkata Municipal Corporation. Such exercise should be completed by the relevant Collector within a period of three months from date. In the event the appellant is found entitled to any further payment, such payment should be discharged by the Corporation

within a further period of three months therefrom, subject to the parties' rights to challenge the Collector's assessment in accordance with law.

There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SANJIB BANERJEE, J.)

(KAUSIK CHANDA, J.)

sg/bp.