

Sl. No. 7

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***M.A.T. 2506 of 2023
(CAN 1 of 2023)
(CAN 2 of 2024)***

Kunal Kumar Adhikary & Anr.

-Vs-

The Kolkata Municipal Corporation & Ors.

For the Appellants : Mr. Raghunath Chakraborty, Adv.
Mr. Ravi Kumar Dubey, Adv.

**For the Respondent
No. 5** : Mr. Suddhasatva Banerjee, Adv.
Ms. Sudha Singh, Adv.

**For the Respondent
No. 10** : Mr. Chayan Gupta, Adv.
Mr. Sagnik Majumder, Adv.
Ms. Shreya Ghosh Dastidar, Adv.

For the KMC : Mr. Alok Kumar Ghosh, Adv.
Mr. Fazlul Haque, Adv.

Heard on : 10.06.2024 & 12.06.2024

Judgment on : 12.06.2024

Joymalya Bagchi, J.:-

1. Appellants have assailed judgment and order dated 18.09.2023 dismissing the writ petition wherein order dated 15.03.2018 rejecting their prayer for cancellation of a sanction plan for making developmental work on a Debuttar Estate had been turned down.

2. A thumbnail sketch leading to the aforesaid dispute is as follows :-

Private respondents are the present Shebaites of the Debuttar Estate. By a registered deed dated 09.08.1959 one Provabati Devi (predecessor-in-interest of the appellants) and her sister Binapani, (predecessor-in-interest of the private respondents) and others were made Shebaites/trustees of the Debuttar Estate. By a subsequent deed dated 16.05.1962 the earlier deed was cancelled and the said Provabati Devi was excluded from the Shebaitship which devolved on Binapani and others. Private respondents are the heirs and successors of the said Binapani and are presently managing the Debuttar Estate. In 2008 private respondents took out an application under Section 34 of the Trusts Act being Misc. Case No.1259 of 2010 and by order dated 30.04.2009 learned District Judge permitted them to carry on development work in the interest of the Estate. It is alleged appellants interfered with the development work and a civil suit, inter alia, seeking declaration that the private respondents are entitled to carry on development work in terms of the order of the District Judge and

permanent injunction was filed. In the said proceeding appellants have been enjoined from entering the Estate.

3. In 2010 appellants filed an application seeking recall of the order passed by the District Judge permitting development of the Estate. During pendency of the said application, in 2012 private respondents made a prayer before the Kolkata Municipal Corporation for grant of sanction. In August, 2013 the sanction was granted and construction commenced. In 2016 the learned District Judge by order dated 20.12.2016 held the endowment being a private Debutter, no permission was required by the Shebaitis to construct and accordingly, recalled the order granting permission.

4. Relying on this order appellants approached Kolkata Municipal Corporation seeking cancellation of the sanction plan. As no steps were taken, appellants approached this Court in W.P. No. 13527(W) of 2017. A learned Single Judge directed the Municipal Commissioner to consider the prayer of the appellant for cancellation of the plan. Pursuant thereto, by order dated 15.03.2018 the Municipal Commissioner refused the prayer.

5. This prompted the appellants to challenge the order before the learned Single Judge. Learned Single Judge having turned down their prayer, appellants are before us.

6. Mr. Raghunath Chakraborty for the appellants submits the Municipal Commissioner failed to consider that the sanction was

procured on the basis of a fraudulent misrepresentation. Though civil suit as well as application for recalling of permission to construct was pending, in paragraph 7 of the declaration private respondents stated no civil or criminal suit was pending over the property. Accordingly, sanction was obtained on dishonest representation and ought to have been cancelled.

7. Mr. Suddhasatva Banerjee for the private respondents submits his clients are the Shebaites of the Debuttar Estate. As per the District Judge's order, Shebait of a private Debuttar Estate is not required to seek permission of court to construct. On such score the earlier order was recalled. There was no fraudulent statement or material misrepresentation which would cast an iota of doubt on the right of his clients to construct on the Debuttar Estate. Accordingly, the prayer for cancellation was rightly turned down.

8. Mr. Alok Kumar Ghosh for Kolkata Municipal Corporation submits order passed by the Municipal Commissioner is a well reasoned order. Municipal Commissioner took into consideration all relevant issues and noted after the declaration the private respondents had submitted the application filed by the appellants for recall of the District Judge's order and the same was before the sanctioning authority at the time of grant of sanction. Under such circumstances, it cannot be said that the plan was sanctioned without requisite knowledge of the application for recall.

9. From the materials on record it appears private respondents are presently the Shebait of the Debuttar Estate. In 1962 Provabati Devi (predecessor-in-interest of the appellants) had been removed from Shebaitship. Till date her removal has not been challenged. Under such circumstances, it cannot be said appellants have any right as Shebait to administer the Estate. On the other hand, private respondents as heirs and successors of late Binapani Devi (the erstwhile Shebait) have been appointed as Shebait/trustees of the Estate and had the right to construct on the Estate.

10. It has been vehemently argued the permission to construct granted by the District Judge was recalled. Perusal of the recalling order would show that the same was done on the premise the order granting permission was not necessary. District Judge observed a shebait to a private Debuttar has unilateral right to make construction and no permission is necessary. Accordingly, the order was recalled.

11. Appellants have also contended the private respondents had made incorrect averment in paragraph 7 of the declaration. Paragraph 7 of the affidavit reads as follows :-

“7. That there is no civil or criminal suit pending over the said land is free from all encumbrances.”

12. Mr. Chakraborty contends the application for recall of the District Judge's order had not been disclosed in the affidavit. This issue has been addressed by the Municipal Commissioner in the impugned order.

Municipal Commissioner stated subsequent to the declaration private respondents in April, 2013 submitted the application for recall before the sanctioning authority and the sanctioning authority was cognizant of such application but proceeded to grant sanction as the order had not been recalled.

13. It is true presently the said order stands recalled. But the ground on which the same was recalled reinforces the right of the private respondents i.e. Shebaitis of the private Debutter to construct on the Estate *de hors* judicial permission. Subsequent recall, therefore, does not cause any cloud with regard to the right of the private respondents on their right to construct.

14. It has also been contended that a civil suit being Title Suit No.3644 of 2009 filed by and between the parties had not been disclosed. Section 397 of the Kolkata Municipal Corporation Act provides the Municipal Commissioner may cancel a sanction plan if he is satisfied such sanction was accorded in consequence of a material representation or fraudulent statement in the notice given or information furnished under law.

15. The contention of the appellants that the application for recall of permission had not been disclosed does not hold water. Municipal Commissioner noted that subsequent to the declaration private respondents had rectified the position and submitted the said application before the sanctioning authority.

16. The other issue canvassed is non-declaration of the Title Suit instituted by the private respondents against the appellants. Appellants were aware of the said suit since 2010. Even then they did not consider it as material suppression and canvass this issue in their application for cancellation.

17. Every incorrect declaration need not amount to material misrepresentation or a fraudulent statement. An incorrect declaration may be an inadvertent mistake which is subsequently rectified or must have a material bearing on the matter in issue i.e. the right to construct on the land.

18. Interpreting the expression 'suppression of a material fact' the Apex Court in *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar*¹ held:

“13...But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken...”

Civil suit referred to by the appellants was instituted in view of the obstruction held out by the appellants in carrying on construction pursuant to the order passed by the District Judge. Neither before the civil court nor in their application for cancellation did the appellants canvass a case that the private respondents are not Shebaites and did not have right to construct on the Debuttar Estate.

¹(2004) 7 SCC 166

19. It may be apposite to mention that in the said civil case appellants have been injuncted from entering the Debuttar Estate thereby holding a prima facie case had been made out in favour of the private respondents. Hence, disclosure of these facts would not have altered the decision in any manner.

20. In the light of the aforesaid facts, this Court is of the considered view the order passed by the Municipal Commissioner that grant of sanction is not vitiated by material representation or fraudulent statement is a reasonable one.

21. Under such circumstances, I do not find any merit in the appeal and the same is accordingly, dismissed.

22. In view of dismissal of the appeal, connected applications being CAN 1 of 2023 and CAN 2 of 2024 are also disposed of.

23. There shall be no order as to costs.

24. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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