SUPREME COURT OF INDIA

Salkia Businessmens Associaiton

Vs.

Howrah Municipal Corporation

C.A.No.5183 of 2001

(S.Rajendra Babu and Doraiswamy Raju JJ.)

08.08.2001

JUDGMENT

Doraiswamy Raju, J.

1. Leave granted.

2. The simple as well as an important question arising in the appeal is as to what is the efficacy of an order passed by the Court in terms of the memorandum of compromise or an agreement, filed in a proceedings on the basis of which the Court proceedings came to be finally disposed of.

3. Shorn of all unnecessary details, it would suffice if a reference is made to the order dated 13.2.1991 passed by a learned Single Judge of the Calcutta High Court in Civil Order No.14861 (W) of 1990. The said proceedings came to be initiated by the Appellant Association, the members of whom were carrying on business as Traders and businessmen on the Grand Trunk Road (North) in and around Salkia Chowrasta, apprehending displacement and demolition of the places of their business for the construction of a fly-over, against Howrah Municipal Corporation, Howrah Improvement Trust, their respective authorities as well as the State. In the said proceedings, an application for settling the disputes has been filed by the parties and the learned counsel appearing for the parties also submitted that the Writ Petition be disposed of in terms of the said application for settlement. The learned Judge, on noticing the above facts ordered, Let there be an order that the Writ Petition is disposed in terms of the settlement made by the parties. Xerox copy of the application for settlement and the order passed today be given to the parties. Let the Writ Petition be disposed of accordingly.

4. The authorities, instead of abiding by the terms of the orders noticed supra, seem to have indicated that spaces would be allotted to the members of the Association by way of alternate accommodation and that the same be accepted by them on ownership basis. It was also said that the alternative accommodation would be provided at No.24, 25, Dol Gobinda Singha Lane, where only the Municipal Corporation has made provision for giving alternate accommodation. Aggrieved, the appellants moved the High Court by means of another Writ

Petition Civil Order No.16348 (W) of 1996 seeking for directions to allot alternate accommodation in terms of the earlier orders of Court, binding between parties and not to flout the same. It may be noticed at this stage and as found adverted to by the learned Single Judge in the present proceedings clause (viii) of the terms of compromise which became part and parcel of the order of the Court, read thus:- (viii) The respondents-Authorities shall see that the displaced persons will get alternative permanent accommodation on G.T. Road between Khetra Mitra Lane and Sri Ram Dhanga Road, excepting owners of petrol pump and factories, if any. However, these persons will be rehabilitated appropriately by the Rehabilitation Committee of the earliest in terms of paragraph 9 of this settlement.

5. The learned Single Judge, by his order dated 11.10.96, dismissed the Writ Petition, in limine, as of no merits. The learned Judge seems to be of the view that the obligations arising out of the terms of the earlier settlement are of the shape of a contract between the parties by the joint petition and any purported breach thereof being one of terms of the contract between parties, if at all, cannot be fruitfully remedied legally by enforcing the terms of the contract between parties but the remedy would lie to seek for compensation which remedy, according to the learned Judge, cannot be available in writ jurisdiction.

6. The learned Single Judge further proceeded to observe that the proposals said to have been made by the authorities over which, the appellants felt aggrieved do not purport to alter the place of alternate accommodations and the nature of settlement relating to such accommodation. In his view, the basic purpose of entering into such an agreement was to provide alternative accommodation to the members of the petitioners, in view of the project and that the substantive terms of such settlement being one relating to alternative accommodations, the appellants cannot demand a particular area or a particular mode of such alternative accommodation and consequently no violation of Article 14 or grievance of arbitrariness could be made out.

7. Aggrieved, the appellants pursued the matter before a Division Bench in F.M.A.T. No.3655 of 1996 and the Division Bench also by its order dated 16.3.2000, concurred with the view of the learned Single Judge, by observing that the claims of the appellants not only involved adjudication of disputed facts but greater public interest call for rejection of the appellants claims. Hence, this appeal. Shri Bhaskar P. Gupta, learned senior counsel for the appellants and Shri Tapas Ray, learned senior counsel for the respondents, were heard. The learned counsel on either side invited our attention to relevant portions of the earlier orders as also those passed in the present proceedings in support of their respective stand.

8. We have carefully considered the submissions of the learned senior counsel on either side. The learned Single Judge as well as the Division Bench of the High Court have not only over simplified the matter but seem to have gone on an errand, carried away by some need to balance hypothetical public interest, when the real and only question to be considered was as to whether the respondent- authorities are bound by the orders passed by the court on the basis of the compromise memorandum, and whether the proposed move on their part did not constitute flagrant violation of the orders of court very much binding on both parties. The High Court failed to do justice to its own orders. If courts are not to honour and implement

their own orders, and encourage party litigants be they public authorities, to invent methods of their own to short circuit and give a go-bye to the obligations and liabilities incurred by them under orders of the court the rule of law will certainly become a casualty in the process a costly consequence to be jealously averted by all and at any rate by the highest Courts in States in the country. It does not, in our view, require any extraordinary exercise to hold that the memorandum and terms of the compromise in this case became part of the orders of the High Court itself when the earlier writ petition was finally disposed of on 13.2.1991 in the terms noticed supra notwithstanding that there was no verbatim reproduction of the same in the order. The orders passed in this regard admits of no doubt or give any scope for controversy. While so, it is beyond ones comprehension as to how it could have been viewed as a matter of mere contract between parties and under that pretext absolve itself of the responsibility to enforce it, except by doing violence to the terms thereof in letter and spirit. As long as the earlier order dated 13.2.91 stood, it was not permissible to go behind the same to ascertain the substance of it or nature of compliance when the manner, mode and place of compliance had already been stipulated with meticulous care and detail in the order itself. The said decision was also not made to depend upon any contingencies beyond the control of parties in the earlier proceedings.

9. The Division Bench of the High Court equally fell into the same error and went, in our view, aside and beside the real issue and point before them. The orders of the High Court under challenge are set aside. The respondents are obliged and as public-authorities are bound to comply with the orders dated 13.2.91, particularly clause/paragraph (viii) of it, relating to the place or site of allotment of alternative sites and other stipulations, in letter and spirit giving the said order full effect. The appeal shall stand allowed, accordingly. No costs.