SUPREME COURT OF INDIA

Real Estate Agencies

Vs.

Govt. of Goa

C.A.No.6383 of 2012

(P.Sathasivam and Ranjan Gogoi,JJ.)

10.09.2012

JUDGMENT

Ranjan Gogoi,J.

1. Leave granted.

2. This appeal has been filed to challenge the order dated 18th August, 2011 passed by the High Court of Bombay (Panaji Bench) in Writ Petition No.98/11 by which the reliefs sought in the writ petition have been refused and the writ petitioner has been left with the option of approaching the civil court for the redressal of his grievances.

3. The facts in brief may be noted at the very outset:

> "(i) The petitioner herein (writ petitioner before the High Court) is a registered partnership firm which had developed a residential colony in Miramar, Goa, known as La Campala residential colony. It is the case of the petitioner that after completion of the developmental work the residual land of the colony, including all open plots that were meant to be kept open as "vacant space", were transferred in favour of the petitioner under a registered deed dated 16th November, 1977. Such open spaces, according to the petitioner, included a piece of land measuring about 19250 sq.mtrs. bearing Chalta No.18 of PT Sheet No. 120, Miramar, Panaji, Goa (hereinafter referred to as 'the land in question'). The petitioner claims that the right, title and interest in the said open land undisputedly vested in the petitioner and the petitioner has exclusive right to develop the said open land which is to the knowledge of all concerned including the respondents in the present appeal.
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> (ii) In the writ petition filed, it was further claimed that sometime in the year 1981 the petitioner wanted to raise construction in an area of about 7,000 sq.mtrs. (consisting of 14 plots of 500 sq.mtrs. each) out of the aforesaid open space of 19250 sq.mtrs.

According to the petitioner, such construction over the 7,000 sq.mtrs. of land would still have kept more than 12,000 sq.mtrs. as open space which area would have been within the prescriptions contained in the existing Municipal Rules and Regulations. However some of the purchasers of the plots who had constructed their buildings thereon and had formed a co-operative society i.e. Model Cooperative Housing Society, approached the Bombay High Court by way of a civil suit bearing No.1/B of 1981 claiming an easementary right in respect of the entire vacant/open space of 19250 sq.mtrs. In the aforesaid suit, the Co-operative Society, as the plaintiff, contended that in the brochures published at the time of development of the housing colony it was represented that 19250 sq.mtrs. of open space will be available in order to ensure plenty of light and ventilation besides serving as a recreational ground for the children of the members of the Society. In these circumstances a decree of injunction was sought against the defendants in Suit No. 1/B of 1981 particularly the defendant No.9 i.e. the petitioner herein from raising any construction on the land in question. By judgment and order dated 29th April, 1983 the said suit was decreed. L.P.A. No. 26/83 filed by the present petitioner against the said judgment and order dated 29th April, 1983 was dismissed and the decree passed by the Learned Single Judge was affirmed. According to the petitioner, in the course of the aforesaid proceedings, no issue with regard to the title of the petitioner to the land in question was raised and it was accepted by all the contesting parties that the petitioner was the owner of the said land measuring 19250 sq.mtrs. In fact, the only issue in the suit was with regard to the right of the petitioner to raise constructions on the said land or on any part thereof.

(iii) It was the further case of the petitioner in the writ petition that an area of about 625 sq. mtrs. out of the open space in question was acquired under the provisions of the Land Acquisition Act, 1894 sometime in the year 1990 and in the said acquisition proceeding, the petitioner was treated as the absolute owner of the land. In fact, according to the petitioner, the compensationpayable under the Award was paid to the petitioner who had also filed a Reference Application under Section 18 of the Act and had further carried the matter in an appeal to the High Court of Bombay."

4. According to the petitioner the aforesaid facts show and establish the undisputed title of the petitioner to the land in question. Certain activities were, however, undertaken on the said land on 2nd January, 2011 and the inquiries made on behalf of the petitioner indicated that alongwith a project of beautification of the adjoining Miramar lake a project to develop the open land in question was proposed to be undertaken. Specifically, a jogging track, walk ways, recreational centres etc. were proposed. According to the petitioner, further inquiries revealed that such developmental work on the land was proposed to be undertaken at the

instance of the respondent No. 3 who is the local Municipal Councilor and, in fact, a Government Order dated 30th June, 2010 had been passed in the matter by the Principal Chief Engineer, Public Works Department, Government of Goa. The petitioner had also averred in the writ petition filed, that the very first stipulation in the order dated 30th June, 2010 required that tenders in respect of the developmental work on the land shall not be issued unless the land itself is acquired. However, without initiating any proceeding to acquire the land, a tender was floated sometime in September, 2010 and the respondent No. 4 was awarded the Work Order sometime in December, 2010 requiring completion of the developmental works on the land within 180 days. It is pursuant thereto that the works on the land were undertaken w.e.f. 2nd January, 2011. As the aforesaid actions of the respondents were not only in violation of the Government Order dated 30th June, 2010 but also had the effect of depriving the petitioner of the ownership in the property in question, the petitioner filed the writ petition in question seeking interference of the High Court in the proposed developmental work which according to the petitioner had already commenced.

5. The respondents in the writ petition, including the Government of Goa and the Corporation of the city of Panaji apart from the Model Co-operative Housing Society, filed separate counter affidavits/written statements in the case. According to the State the open space in question was required to be kept free from any kind of construction under the planning laws in force and that the plot owners in the residential colony have an easementary right on and over the open space which had been so declared by the High Court of Bombay in Civil Suit No.1/B/1981 and L.P.A. No.26/1983. Furthermore in terms of the judgments of the High Court in the aforesaid cases the petitioner was obliged to keep the open space so available and vacant at all times. In the affidavit filed the State had also contended that at no point of time the petitioner was interested in developing the open space and the same had become a dumping ground of garbage. In such a situation the Local Corporator of the Panaji Municipal Corporation was requested by the residents to intervene in the matter and develop the land into a recreational area. Initially the work was entrusted to the Goa State Infrastructure Development Corporation. Thereafter, the Goa State Urban Development Agency was entrusted with the responsibility. However, as both the aforesaid entities faced the problem of shortage of funds it was decided that the work will be carried out by the PWD, Goa. In the affidavit filed it was further stated that the open space was to be developed into (a) Children Playing area, (b) Joggers Track, (c) Water Harvesting Pond, (d) Multi-purpose court for cricket/football and (e) a Tennis court and an Amphitheatre. Such development which was to be to the benefit of all the residents, particularly the children and the elders, was estimated to cost around Rs.2.92 crores. It was specifically stated in the affidavit of the State, that the work had already commenced and almost 14% thereof had been completed. In para 14 of the affidavit it was stated that in terms of the decision of this Court in Chet Ram Vashist v.

Municipal Corporation of Delhi[1], the petitioner has ceased to be the legal owner of the land and its position was that of a trustee holding the land for the benefit of the members of the Housing Society and the public at large. The petitioner had no right to use the land for any developmental work or to transfer or sell the same; it was merely a trustee of the land holding the same for a specific purpose i.e. beneficial utilization as an open space by the community at large. In a situation where the petitioner had done nothing to develop the open space for the public good, the Government had decided to step in and carry out the project for the benefit of the residents.

6. In the affidavit filed by the respondent No.2 - Commissioner of the Municipal Corporation, Panaji, a claim that the open space had vested in the Corporation had been raised whereas in the affidavit filed on behalf of respondent No. 5 i.e. Model Cooperative Housing Society, the details of the judgment in Civil Suit No. 1/B of 1981 had been mentioned under which the land in question is required to be maintained as an open space so to enable the residents to have free access to light and air apart from recreational facilities. In the affidavit filed by the respondent No. 5, the decision of this Court in Chet Ram Vashist 's case (supra) had also been relied upon to contend that the legal title of the petitioner in the said open space stood extinguished and petitioner is holding the land only as a trustee on behalf of the residents of the locality. As the petitioner had not discharged the duties cast upon it as a trustee and had utterly failed to develop the open space, the residents of the locality had approached the local Ward Councilor (respondent No.3) who had taken the initiative to develop the land in question.

7. The aforesaid detailed recital of the facts projected by the parties had become necessary as the order of the High Court assailed in the present SLP does not contain any reference to the relevant circumstances in which the High Court had passed the impugned order or the reasons why the petitioner was relegated to the remedy of initiating a civil action. Time and again this Court has emphasized that such a course of action by a Court cannot lead to a legally acceptable conclusion inasmuch as the manner of reaching the decision and the reasons therefor are sacrosanct to the judicial process. However, we do not wish to dilate the aforesaid aspect of the matter any further in view of the clear and consistent insistence of this Court on the aforesaid fundamental requirement.

8. A reading of the order of the High Court would go to show that its refusal to interdict the developmental works undertaken or about to be undertaken is on the ground that the Petitioner has an efficacious alternative remedy, i.e. a suit for injunction. The Writ Court exercising jurisdiction under Article 26 of the Constitution is fully empowered to interdict the State or its instrumentalities from embarking upon a course of action to detriment of the rights of the citizens, though, in the exercise of jurisdiction in the domain of public law such

a restraint order may not be issued against a private individual. This, of course, is not due to any inherent lack of jurisdiction but on the basis that the public law remedy should not be readily extended to settlement of private disputes between individuals. Even where such an order is sought against a public body the Writ Court may refuse to interfere, if in the process of determination disputed questions of fact or title would require to be adjudicated.

9. However, there is no universal rule or principle of law which debars the Writ Court from entertaining adjudications involving disputed questions of fact. In fact, in the realm of legal theory, no question or issue would be beyond the adjudicatory jurisdiction under Article 226, even if such adjudication would require taking of oral evidence. However, as a matter of prudence, the High Court under Article 226 of the Constitution, normally would not entertain a dispute which would require it to adjudicate contested questions and conflicting claims of the parties to determine the correct facts for due application of the law. In ABL International Ltd. Anr. V. Export Credit Guarantee Corporation of India Ltd.[2], the precise position of the law in this regard has been explained in paragraphs 16, 17 and 19 of the Judgment in the course of which the earlier views of this Court in Smt. Gunwant Kaur Ors. v. Municipal Committee, Bhatinda Ors.[3] and Century Spg. Mfg. Co. Ltd. v. Ulhasnagar Municipal Council[4] has been referred to. The aforesaid paragraphs of the judgment in ABL International Ltd. Anr. v. Export Credit Guarantee Corporation of India Ltd. (supra) may, therefore, be usefully extracted below:

> "A perusal of this judgment though shows that a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a court in the exercise of its jurisdiction under Article 226 of the Constitution of India. This decision again, in our opinion, does not lay down an absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. In this view of ours, we are supported by a judgment of this Court in the case of Gunwant Kaur v. Municipal Committee, Bhatinda - 1969 (3) SCC 769 where dealing with such a situation of disputed questions of fact in a writ petition this Court held: (SCC p. 774, paras 14-16)
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> "The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit-in-reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion

must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section 4 by the Collector. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit-in-reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit."

10. The above judgment of Gunwant Kaur (supra) finds support from another judgment of this Court in the case of Century Spg. and Mfg. Co. Ltd. v. Ulhasnagar Municipal Council - 1970 (1) SCC 582 wherein this Court held: (SCC p. 587, para 13)

> "Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit against a public body. The questions of fact raised by the petition in this case are elementary." xxx xxx
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> 19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur (supra) this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and

there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.

11. The Petitioner in the present case claimed title to the land in question on the basis of the deed of Indenture dated 16.11.1977; the order of the Bombay High Court in Suit No. 1/B/1981 and LPA No. 26 of 1983 as well as the proceedings of acquisition in respect of an area of about 625 sq. m. out of the open space in question. The State did not claim any title to the land but had contended that by virtue of the judgment of this Court in Pt. Chet Ram (supra) the Petitioner had ceased to hold the normal attributes of ownership of immovable property in respect of the land in question and its position was more akin to that of a trustee holding the land for the benefit of the public at large. The Housing Society (defendant No.5), on the other hand, claim easementary right of enjoyment of the open space. It is only the Municipal Corporation, Panaji (defendant No.2), who had claimed that the land has vested in it. How and in what manner such vesting had occurred, however, had not been stated in support of the claim of the Corporation. There is complete silence in this regard. In such circumstances, it was incumbent on the High Court to undertake a deeper probe in the matter in order to find out whether the claim of the Corporation had any substance or had been so raised merely to relegate the Petitioner to a more "lengthy, dilatory and expensive process" that is inherent in a civil suit. The High Court, in our considered view, ought not to have disposed of the Writ Petition at the stage and in the manner it had so done and, instead, ought to have satisfied itself that there was actually a serious dispute between the parties on the question of ownership or title. Only in that event, the High Court would have been justified to relegate the Petitioner to the Civil Court to seek his remedies by way of a suit. On the view that we have taken, we have to conclude that the impugned order dated 18.08.2011 passed by the High Court is not tenable in law. However, having arrived at the aforesaid conclusion the next question that has to engage our attention is what would be the appropriate order in the facts and circumstances of the case?

12. In the counter affidavit filed before this Court, the Respondent claims that about 40% of the work has been completed and extension of time for completion of the remaining work, as per the terms of the Contract, is being processed. Though the Petitioner disputes the aforesaid position, it may be reasonable to assume that in absence of any interim order some progress in the execution of the developmental work has taken place during pendency of the present proceeding. There is also no manner of doubt that the land in question being earmarked as open space and the said fact having been affirmed by the High Court in Civil Suit No. 1/B/1981 and LPA No. 26 of 1983, the normal attributes of legal ownership of the land have ceased insofar as the Petitioner is concerned who is holding the land as a Trustee on behalf of the residents and other members of the Public. The Petitioner cannot transfer the land or use the same in any other manner except by keeping it as an open space. The aforesaid position

flows from the decision of this Court in Pt. Chet Ram Vashist (supra) wherein such a conclusion had been reached by this Court in a largely similar set of facts.

13. Keeping in mind the very limited rights of the Petitioner that are disclosed at this stage by the materials on record and taking into account the nature of the developmental works that were proposed and the fact that a part of the work may have been executed in the meantime, we are of the view that the Respondents should be permitted to complete the remaining work on the land and the petitioner should be left with the option of raising a claim before the appropriate forum for such loss and compensation, if any, to which he may be entitled to in law. Naturally, if any such claim of compensation is required to be founded on proof of title/ownership or any other such relevant fact(s), the Petitioner will have to establish the same. No part of the present order shall be construed to be an expression of any opinion of this Court with regard to the ownership or any other right or entitlement of the Petitioner which has to be proved in accordance with law.

14. Consequently, we dispose of the Civil Appeal in the above terms.

Judgment Referred

[1] (1995) 1 SCC 0047
[2] [2004 (3) SCC 0553
[3][1969 (3) SCC 0769
[4] [1970 (1) SCC 0582