Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:-
The Hon'ble Justice Subhasis Dasgupta

W.P.A. 320 of 2019

M/s. Kamala Tea Company Limited & Ors.
Vs.
The State of West Bengal & Ors.

For the Petitioners	: Mr. Joyjit Choudhury, Adv. Mr. Sayan De, Adv. Mr. Rohit Agarwal, Adv. Mr. Ajay Singhal, Adv. Mr. Maurya Sarkar, Adv. Ms. Esha Acharya, Adv.
For The Respondent Nos. 5, 6 & 7	: Mr. Ajoy Krishna Chatterjee, Sr. Adv. Mr. Amit Chatterjee, Adv. Mr. Kunaljit Bhattacharjee, Adv.
For the Official Liquidator	: Mr. Ajay Choudhuri, Adv. Mr. Deborshi Dhar, Adv.
For the State	: Mr. Subir Kumar Saha, Ld. A.G.P. Mr. Bikramaditya Ghosh, Adv.
Heard on	: 23.03.2021
Judgment on	: 26.03.2021.

Subhasis Dasgupta, J.:

The grievance of the petitioners is that State/respondent authority Nos. 1-4 without making strict adherence to the conditions, imposed in their notifications issued for the purpose, dated 20th August, 2009, and subsequent notification dated 03.08.2018, steps were taken for execution of fresh lease deeds with respect to four (4) tea gardens, namely Bamandanga Tea Garden, Samsing Tea Garden, Yangtong Tea Garden and Tondoo Tea Garden, in favour off respondent nos. 5, 6 & 7 upon determination of lease of erstwhile lessees, being proforma respondent nos. 1 & 2.

Admittedly, petitioners extended credit facilities to erstwhile lessees of those tea gardens of proforma respondent nos. 1 and 2, for improvement of tea gardens.

All the existing liabilities of those tea gardens of erstwhile lessees being proforma respondent nos. 1 and 2 were, thus, required to be assumed by the subsequent lessees, being respondent nos. 5, 6 and 7 before execution of fresh lease in their favour on the strength of such notifications, writ petitioners contended.

It was mentioned in such Government notification dated 20th August, 2009, that the prayer for execution of lease afresh upon determination of previous lease will be considered subject to confirmation of taking over all past liabilities, including outstanding bank loans, workers' dues, Provident Fund dues, and other statutory liabilities etc. in respect of the said tea gardens, by the subsequent lessees.

By subsequent Government notification dated 3rd August, 2018, each of the respondent nos. 5, 6 & 7 was requested to clear all past liabilities, including bank dues, workers' dues, Provident Fund dues, statutory liabilities etc. for all the tea gardens, proposed to be handed over to respondent nos. 5, 6 & 7, upon execution of a fresh lease and submit a report along with an affidavit of declaration of clearance of dues payable to those tea gardens.

Learned advocate Mr. Joyjit Choudhury, representing the writ petitioners referring two (2) such notifications submitted that for the non-fulfillment of the conditions, revealed in such notifications, as a prerequisites for granting fresh lease upon determination of the previous lease, that there had been inaction exposed on the part of the State/respondent nos. 1-4 in their deliberate attempt to execute fresh lease with respect to the four tea gardens in favour of the respondent nos. 5-7, upon determination of lease of erstwhile lessees, and referring such inaction, a writ of mandamus was proposed to be issued, commanding the State/respondents from staying the execution of a fresh lease deeds to the respondent nos. 5-7 without complying with the formalities, as mentioned therein in the Government notifications referred above.

An interim order was granted in this case on 11th September, 2019, directing respondent no. 1 not to take any steps subsequent to the state of affairs, as was existing on 1st August, 2019, until the matter is heard out after exchange of affidavits.

Mr. Choudhury, learned advocate for the petitioners, incidentally drew attention of the Court to the order dated 20th March, 2017, passed in C.A. No. 876 of 2015 with C.P. No. 71 of 2009, wherein winding up order of Tondoo Tea Co. Pvt. Ltd. in liquidation was challenged by allottee viz. Bamandanga Tea Estates Private Limited for their both the tea estates, and the Court by the order directed all the parties involved in such case to maintain status quo with regard to ownership and possession of assets of the tea garden till the disposal of the application.

According to Mr. Choudhury, the execution of fresh lease deeds was in violation of the direction passed in 20th March, 2017, which could be adequately remedied issuing mandamus for the purpose, in exercise of writ jurisdiction available to this Court.

Referring Section 334 of the Companies Act, 2013, it was proposed by the writ petitioners that in disposition of the property subsequent to the winding up order being passed by Tribunal, shall be void.

Per contra, Mr. Ajoy Krishna Chatterjee, learned senior advocate representing respondent nos. 5, 6 and 7, submitted that the erstwhile lessee, namely Tondoo Tea Co. Pvt. Ltd. had already gone into liquidation, and Official Liquidator had already taken symbolic possession of the tea garden under Tondoo Tea Co. Pvt. Ltd.

Upon determination of lease of previous leases, the tea gardens supposedly went back to State Government under Section 108 of Transfer of Property Act.

According to Mr. Chatterjee, the subsequent lessees were under obligation to assume liability of erstwhile lessees upon determination of their lease to the extent of statutory liability in respect of the tea gardens of company going into liquidation.

Referring the principle of *Ejusdem generis,* as available in the ***Black's Law Dictionary***, Mr. Chatterjee proposed that the canon of statutory construction would be where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated.

Upon referring such principle, Mr. Chatterjee submitted that notification issued from Government end requiring assumption of existing liability of the tea gardens must be restricted to statutory liabilities.

The company of the erstwhile lessee having gone into liquidation and following which the Official Liquidator being appointed for the purpose, before whom the writ petitioners had already submitted their affidavits of report of debt, the instant writ application would not be maintainable on the score that for the settlement of the dues in consequence of a private dispute, no mandamus should be allowed to be issued. More so, there had already been execution of the three (3) lease deeds in favour of respondent nos. 5-7 sufficiently well in advance before the interim order was granted in this case, Mr. Chatterjee contended.

The status of the writ petitioners, according to respondent nos. 5-7 could at least be to that of unsecured creditors in respect of a loan transaction, admittedly entered into between the parties, and as such the private dispute would not be maintainable by initiating an action for the purpose of issuance of a mandamus.

Mr. Bikramaditya Ghosh, learned advocate representing State/respondent nos. 1, 2, 3 & 4 candidly submitted that the objective purpose of the writ petitioners was to recover money already given to the erstwhile lessees/proforma respondent nos. 1 and 2. Supporting the stand of Mr. Chatterjee, learned senior advocate for the respondent nos. 5, 6 and 7, Mr. Ghosh for the State/respondents submitted that the dispute involved in this case being private in nature, writ of mandamus would not be maintainable.

Mr. Ghosh further contended that the erstwhile lessees/tea companies had abandoned the tea gardens thereby deserting the lessee tea gardens, and putting the poor tea garden workers in extreme financial distress.

The State/respondents upon adoption of a policy intending to protect tea garden workers, who were directly attached with said tea gardens, issued a public notice deciding to grant fresh lease upon determination of the previous lease. It was an honest effort simply to protect and safeguard the livelihood of the poor tea garden workers, State submitted.

Since, there had been already execution of three (3) lease deeds, followed by its registration held on 2nd August, 2019, out of four (4) proposed lease deeds, there left nothing to be adjudicated, maintaining an action proposing issuance of mandamus, so as to stop execution of lease deeds, and its subsequent action attached therewith.

As regards the then existing liabilities of the erstwhile lessees/tea company, learned advocate for the State also proposed for restrictive application of the liability, confining its scope to the statutory liability.

Mr. Ghosh also contended that though he had no sufficient explanation, supported by documents connected therewith to reveal that there had been adequate adherence to the conditions imposed in the Government notifications for entering into a new transaction of executing a lease afresh in favour of respondent nos. 5-7, upon determination of the previous lessees/tea garden companies, but it would be inconsequential for the present purpose, on the score that fresh lease deeds had already been executed in the first week of August, 2019, followed by its registration on 2nd August, 2019, i.e. much before the interim order being granted in this case, upon anticipating that no formal leave of Court is necessary for execution of lease afresh, subsequent to the dismissal of a SLP (C) No. 1178 of 2014 with SLP (C) No. 2164 of 2014 of Apex Court for the smooth running of Tondoo Tea Garden, and thereby advancing a stand for the State respondents that the new lessee shall be bound by the decision of C.P. No. 71 of 2009, read with C.P. No. 75 of 2009, now pending before the Hon'ble High Court at Calcutta.

The dispute involved being purely private in nature, intended for recovery of money, maintaining an action proposing issuance of mandamus to frustrate execution of the lease afresh in respect of respondent nos. 5-7, would not only be good enough for consideration, but also not maintainable at the moment, State contended.

Mr. Ajay Choudhuri, representing Official Liquidator, had nothing to say as regards the execution of lease afresh in favour of respondent nos. 5-7.

In furtherance of proposed prayer seeking mandamus to stall the execution of fresh lease deeds, learned advocate for the writ petitioners placed reliance on a decision reported in ***(2005) 6 SCC 657*** delivered in the case of ***Binny Ltd. & Anr. Vs. V. Sadasivan & Ors.***, in order to establish that the instant writ application was very much maintainable under Article 226 of the Constitution of India, and the Court can exercise its judicial review of State inaction, challenged by writ petitioners.

Upon consideration of the decision cited above, it appears that in normal circumstances judicial review principles cannot be used to enforce contractual obligation. When the power is used for public purpose, it is certainly amenable for judicial review. The power must be used for lawful purpose, and not unreasonably.

Upon perusal of the averments contained in the writ application, it appears that there left no public law element in justification of the maintenance of writ application before this Court. The decision so referred, appears to be inapplicable in the given facts and circumstances of this case.

Reliance was further placed by writ petitioners on a decision reported in ***2013 (2) Mh. LJ 777*** delivered in the case of ***Sunita Vasudeo Warke Vs. Official Liquidator & Ors.***, that upon passing an winding up order, no new right can be created, and no uncompleted right can be completed, and that being the position of law, execution of the lease deeds afresh followed by its registration, according to writ petitioners, was illegal.

The Court cannot be oblivious of a significant fact that the tea garden company of proforma respondents were wound up already by an order of the Court in the year 2016, passed by the Hon'ble High Court at Calcutta, and the Official Liquidator had already taken symbolic possession of the companies going into liquidation. Subsequent to the order of winding up, without any controversy the writ petitioners themselves filed an affidavit of report of debt before the Official Liquidator setting up their dues payable and receivable from the concerned companies, now in liquidation.

The execution of fresh lease deeds cannot be frustrated merely upon visualization of the contractual obligation of the beneficiaries/erstwhile lessees towards the writ petitioners in consequence of a commercial transaction extending credit facilities to the proforma respondents, now going into liquidation, when there is no apparent public law element involved in the instant contractual obligation. The decision so referred by the writ petitioners on the score would hardly find its scope to be applied over the facts and circumstances of this case.

Profit was sought to be capitalized by writ petitioners by citing a decision reported in ***(1974) 2 SCC 231*** rendered in the case of ***Union of India Vs. Raman Iron Foundary***, wherein discussion was there for perfectly understanding the meaning of *"debt owing"* and *"debt in praesenti"*. According to Apex Court, when there is obligation to pay a sum of money at a future date, it is *"debt owing"*, when the obligation is to pay a sum of money in *praesenti*, it is debt due.

Such interpretation of 'debt' together with the principle laid down in such decision will hardly find any field for its due application in the given circumstances of this case.

Learned advocate for respective respondents also challenged the applicability of such decisions, referred above.

Having considered the submission of both sides, it appears that the points raised are thus squeezed to one and only question, whether writ of mandamus will lie in resolving a private dispute, intending to recover money in disguise alleging State inaction, already lent out to the beneficiary/erstwhile lessees/proforma respondent nos. 1 and 2 tea garden companies, when affidavit of report of debt for and on behalf of creditors/writ petitioners had already been filed before the Official Liquidator pursuant to a winding up order.

According to writ petitioners, respondent no. 5 being M/s. Bamandanga Tea Estates Private Limited is supposed to assume past financial liabilities of Tondoo Tea Garden, respondent no. 6 being M/s. Samsing Organic Tea Private Limited is to assume past liability for the Samsing Tea Garden, while respondent no. 7 being Yangtong Organic Tea Private Limited is under obligation to assume past liability of Yangtong Tea Garden.

Tondoo Tea Company Private Limited (now under liquidation), and Samsing Plantation and Industries Private Limited, indisputably are the previous lessees in respect of their tea gardens.

Respondent nos. 5-7 took over possession in 2007, in respect of Bamandanga Tea Garden, Tondoo Tea Garden, Samsing Tea Garden and Yangtong Tea Garden.

In paragraph-27 of the instant writ application, an averment was there that the amount granted to the erstwhile lessees tea gardens company, as loan amount could not be paid off, and according to writ petitioners it was sufficient enough to create liability for assumption by subsequent lessees of previous lessee tea gardens, and erstwhile lessee tea gardens should not be declared free from encumbrances, before execution of fresh lease.

In the paragraph-23 of the writ petition, it was submitted that before the Official Liquidator, the claims of the writ petitioners had already been registered intending to recover the loan amount together with interest prior to making transfer of assets of company in liquidation, but till date nothing could be recovered.

Therefore, the execution of fresh lease was intended to be stalled pending realization of unpaid amount, given as loan amount to the erstwhile lessees in connection with the transaction already entered into between the parties.

Without any controversy, writ petitioners are neither assignee, nor representative in interest of the erstwhile lessees being proforma respondent nos. 1 and 2. Surprisingly, though, the writ petitioners endeavoured to maintain an action proposing issuance of mandamus simply to frustrate execution of lease afresh upon respondent nos. 5-7, but no steps were taken before any court of law in civil jurisdiction to challenge the previous determination of lease of erstwhile lessees alleging illegalities, if there be any.

Winding up order having passed against the proforma respondents, followed by submission of affidavit of report of debt before the Official Liquidator, in consequence of the proforma respondents/companies going into liquidation, the dues payable by the said companies (in liquidation) become a subject matter of Official Liquidator. The instant writ application proposing issuance of mandamus for stalling the execution of the lease deeds is not good enough for consideration for conspicuous absence of public law element in the contractual obligation to be discharged.

Since, for and on behalf of the writ petitioners an affidavit of report of debt for creditors/writ petitioners has already been submitted before the Official Liquidator, the Court is of the view that there is hardly any scope to interpret the word *"existing liability"* of the erstwhile lessees/companies in its true context, contrary to the definition of Section 3 (10) (11) of the Insolvency and Bankruptcy Code, 2016, as proposed by either of the parties to this case, being an unnecessary academic exercise.

As regards the fate of execution of the lease deeds followed by its registration, in favour of the respondent nos. 5, 6 and 7, the Court is of the further view that pursuant to the disclosure of the State/respondents, being communication made by Joint Secretary to the Government of West Bengal, addressed to the Official Liquidator, High Court at Calcutta, being Memo. No. 1079-LP/3T-13/17, dated 29.03.2019, revealing that the lessee shall be bound by the outcome of C.P. No. 71 of 2009 and C.P. No. 75 of 2009 of High Court, Calcutta; no further order is necessary pertaining to text, as presented by the writ petitioners, under reference, because State respondents having already taken a stand, no other stand is permissible on that score.

In writ jurisdiction there is least scope to declare a registered document to be *non est*, when there had already been execution of three (3) lease deeds, followed by its registration, out of four (4) proposed lease deeds afresh.

The Court shares the same view, as proposed by the respondents, that it was a private dispute simply to recover money from the beneficiary tea garden company, already going into liquidation, and for such purpose, the grievance so raised by the writ petitioners, would not be sufficient enough to be considered responding to the proposed prayer for issuing mandamus for the purpose.

For the discussions as aforesaid, the writ petition is dismissed being without any merits. This will, however, not prevent the writ petitioners from pursuing any other relief, if there be any, available in any other provisions of law.

With this discussion, the writ petition stands disposed of.

Urgent certified photostat copy of this judgment, if applied for, be given to the parties upon compliance of all necessary formalities.

(Subhasis Dasgupta, J.)