

04.05.2023
Item No.12
gd/ssd

FMA/14/2023
IA NO: CAN/1/2023
PUNJAB NATIONAL BANK AND ORS.
VS
TAPAS DHARA AND ORS.

Mr. Chapales Bandyopadhyay,
Ms. Anandamayee Dutta,
Ms. Atmaja Bandyopadhyay,
Mr. Monojit Das,
Ms. Gargi Basi
..for the Appellants.

Mr. Kishore Mukherjee,
Mr. Sankha Subhra Ray,
Mr. Ahitagni Dey
..for the Respondent Nos.1 and 2.

Mr. D. Chakraborty,
Ms. Paushali Banerjee
..for the Respondent Nos.3 to 5.

1. This intra court appeal by the Punjab National Bank which was a respondent in WPA 21024 of 2021 is directed against the order dated 07.11.2022 by which the learned Single Bench disposed of the writ petition filed by the respondents and directed the appellants to pay the outstanding property tax and other charges in terms of the lease deed entered into between the parties in respect of a property occupied by the bank. When the appeal was entertained, an order of interim stay was granted.

2. We have heard the learned advocate for the appellants as well as the learned advocate for the respondent/writ petitioner.

3. The first hurdle which the writ petitioner/respondent has to cross is to satisfy this Court as regards the maintainability of the writ petition. The prayer sought for in the writ petition is to direct the appellant bank to take steps to reimburse a sum of more than Rs.10 lakhs purported to be the apportioned share of taxes and other liabilities which has been already deposited by the writ petitioners on behalf of the appellant bank and also pay share of tax liability and commercial surcharge on the outstanding and/or balance corporation taxes and commercial surcharge amounting to more than Rs.21 lakhs towards discharge of their obligation as stipulated in the agreement along with interest and penal charges if any demanded by the Kolkata Municipal Corporation due to delayed payment.

4. Admittedly, the writ petitioners were the owners of an immovable property which appears to have been leased out to the appellant bank. The terms and conditions of the lease have been reduced to writing wherein there appears to be certain obligations on the appellant bank. The lease deed is purely a private transaction between the appellant bank and the writ petitioners.

5. In order to show that the writ petition was maintainable, the learned advocate appearing for the respondents/writ petitioners placed reliance on the

decision of the Hon'ble Supreme Court in M.P. Power Management Company Limited, Jabalpur v. M/s. Sky Power Southeast Solar India Private Limited & Others reported in SLP(C) Nos.4609-4610 of 2021 dated 16th November, 2022 and submitted that the decision relied on by the appellant in the case of M/s. Radhakrishna Agarwal and Others v. State of Bihar and Others reported in (1977) 3 SCC 457 which was taken note of by the Division Bench while granting interim stay is no longer good law.

6. To examine as to whether the decision in M.P. Power Management Company Limited will in any manner help the case of the writ petitioners, we need to take note of the facts of the said case. The said matter pertains to a request made by the appellants for proposal for long term procurement of 300 M.W. of solar energy through tariff based data and the bid of the first respondent therein was accepted and they were declared as successful bidders. Subsequently there is a special purpose created and there were other agreements and supplementary agreements which were entered into.

7. Considering the scope of the contract between the parties which were pertaining to supply of power, the Court held that the mere fact that the relief is sought under contract which is not statutory will not entitle the respondent State in a case by itself to ward

off scrutiny of its actions or inactions under contract, if complaining party is able to establish that the action/inaction is per se arbitrary. Further, the Hon'ble Supreme Court held that a writ would lie when the State purports to any largesse and undoubtedly in the said case the stage was prior to the contract being entered into and the Court would undertake judicial review which has been declared in the decision of the Hon'ble Supreme Court in *Tata Celular v. Union of India*. Further, the Hon'ble Supreme Court observed that the existence of an alternate remedy is undoubtedly a matter to be borne in mind in declining relief in writ petition in contractual matters. Further, it was held that the question as to whether a writ petitioner must be told off the gates would depend upon the nature of the claim and the relief sought for in the writ petition, the questions which would have to be decided, and, most importantly, whether there are disputed questions of fact, the resolution of which is necessary, as an indispensable prelude to the grant of relief sought for.

8. Thus, the argument of the learned advocate for the respondent that as an universal rule a writ would be maintainable in the private contractual matter cannot be accepted.

9. In the instant case, the prayer sought for is for reimbursement of an amount which has already

been deposited/paid by the writ petitioner pursuant to the conditions contained in the lease agreement. Therefore, if the writ petitioner seeks to specifically enforce the terms of agreement, his remedy lies elsewhere.

10. In the light of the above, the order and direction issued by the learned Single Bench caused no interference. In the result, the appeal is allowed and the order passed by the learned Single Bench is set aside and the writ petition is dismissed leaving it open to the writ petitioner to work out his remedies before the appropriate forum in accordance with law.

(T. S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)