

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

MAT 891 of 2024
with
CAN 1 of 2024

Siraj Khan
-Vs-
State of West Bengal & Ors.

For the Appellant	: Mr. Bikash Ranjan Bhattacharjee, Sr. Adv Mr. Uday Sankar Chatterjee, Mr. Suman Sankar Chatterjee Ms. Snigdha Saha Ms. Aiswarya Dutta
For the State	: Ms. Sonal Sinha Mr. Avishek Prasad
For Haldia Development Authority	: Mr. Pratik Dhar, Sr. Adv. Mr. Amit Kumar Nag Mr. Partha Banerjee Ms. Pritha Bhawmik
For Haldia Municipality	: Mr. S. M. Hassan Ms. Anupama Yasmin
Heard on	: 10.06.2024
Judgment on	: 10.06.2024

Joymalya Bagchi, J. :-

1. Judgment and order dated 22.04.2024 dismissing the writ petition whereby and whereunder appellant had prayed for setting aside a tender notice dated 5th February, 2016 issued by the respondent Haldia Development Authority (hereinafter referred to HDA) and for direction upon the respondent authorities to allow him to continue and complete development and beautification work at Subhas Sarobar in terms of the licence agreement dated 05.10.2012 alternatively compensation to the tune of Rs.4 crores with interest at the rate of 18 per cent per annum for the amount invested by the appellant in the development work has been assailed.

Facts leading to the appeal :-

2. On 11.12.2009 Haldia Municipality/respondent no. 5 had issued a notice inviting tender for grant of lease for beautification and commercial exploitation of a water body named and styled as 'Subhas Sarobar' and its adjoining embankments. Appellant was awarded the tender and a licence agreement was executed by and between the appellant and the Municipality for undertaking beautification work of Subhas Sarobar. The agreement was for thirty years on yearly rental of Rs.2,25,000/- to be increased by 10 per cent every year. One of the terms of the agreement required the appellant to complete the entire beautification and other allied works within two years on the property from the date of execution of the agreement. The agreement also provided if the appellant i.e. the licensee failed to pay yearly rent on time or committed breach of terms and conditions of the deed,

Municipality would have the right to re-enter the property and recover possession of the licensed property along with moveables and immovables thereon.

3. In terms of the agreement a building plan was submitted to the Municipality for sanction. Erection fee to the tune of Rs.1,52,775/- was also paid in 2010. In the meantime HDA raised objection with regard to the beautification work. HDA contended the Municipality had no right, title or interest on the land. HDA also lodged a criminal case against the former Chairperson of the Municipality. By letter dated 7th July, 2012 appellant brought this fact to the notice of the Municipality. In the light of these developments the Municipality by letter dated 30th August, 2010 directed the appellant to suspend the work on the project. Thereafter the Municipality by letter dated 6th September, 2012 called upon the appellant to resume the work and complete the same within three months. In response the appellant by letter dated 24th September, 2012 informed the Municipality that the latter had suppressed material facts and in a fraudulent manner executed the licence agreement although they had no right in the land in question. In reply, Municipality by letter dated 5th October, 2012 intimated the appellant that their contract shall stand terminated if they failed to resume work within 48 hours. Appellant did not resume the work. After a lapse of four years in 2016 a notice inviting tender for lease of the selfsame land was floated by HDA. At this juncture appellant assailed the tender notice and prayed for other reliefs. Learned Judge

dismissed the writ petition, inter alia, holding that the appellant had neither undertaken any beautification work between October, 2010 and July, 2012 nor did he pay the rentals regularly.

Arguments by the parties :-

4. Mr. Bhattacharjee, learned senior Counsel argues the learned Judge erred in arriving at the aforesaid findings. Referring to the application for permission to set up the building on the land and deposit of erection fees in 2010, he contends his client had made substantial investments in the project. He also contends dispute between HDA and Municipality had been preventing his client from carrying on the beautification work. He also submits the letter dated 05.10.2012 is a threat of termination and not termination of the licence itself. The agreements between the parties were subsisting and the cause of action arose when HDA issued notice inviting tender for pisciculture in Subhas Sarover.
5. In response, Mr. Dhar, learned senior Counsel for the HDA submits the land belonged to his client. A lease had been executed in favour of the Municipality which expired in 2004. Though resolutions were taken to extend the lease, but no deed had been executed in favour of the Municipality. Accordingly, in 2009-2010 Municipality had no right to issue the notice inviting tender and execute the agreement in favour of the appellant. Without prejudice to the aforesaid, he contends appellant had not complied with the terms of the agreement. He did not complete the beautification work within the stipulated time i.e. two years. Nor did he pay the rentals regularly. Even in the writ petition appellant had not

challenged his termination in 2012. Under such circumstances, appellant did not have any legal right to challenge the notice inviting tender or for compensation for termination. Anyway, HDA had not proceeded with the notice inviting tender.

6. Mr. Hasan, learned Counsel for Haldia Municipality submits appellant was a licensee and is precluded from challenging the right of the Municipality to execute the licence agreement. On this flimsy excuse inspite of notice dated 6th September, 2012 they refused to complete the work. As a result, the Municipality issued letter dated 5th October, 2012 intimating the licence would be terminated if they did not resume work within 48 hours. He, however, contends if the appellant was willing to pay the outstanding rentals with interest the licence may be revived.

Findings :-

7. In the writ petition appellant has challenged the notice inviting tender issued in 2016 for carrying on pisciculture in Subhas Sarobar. Learned Counsel for HDA submits notice inviting tender has since been abandoned. In light of the aforesaid submission, we are of the opinion primary prayer of the appellant assailing the notice inviting tender does not survive. The other prayers made by the appellant revolve around legality of termination of the licence agreement executed in his favour and grant of compensation in case of wrongful termination. When a statutory/local body cancels a contract, its decision though in the realm of contract is amenable to judicial review under Article 226 when

the impugned State action has a 'public law' element, i.e. arbitrariness or breach of principles of fairness or natural justice which infracts Article 14. Discretion to invoke such power under Article 226 is, however, hedged by self imposed restrictions regarding disputed questions of fact. Municipality had executed the agreement in favour of the appellant in 2010 for beautification of a waterbody viz. Subhas Sarobar. HDA claims it is the lawful owner of the said waterbody and the Municipality had no right to execute the licence agreement. This raises a serious and disputed question regarding the title and right of the Municipality to execute the licence deed itself. In its letter dated 24th September, 2012 the appellant himself expressed doubt with regard to the right of the Municipality to execute the agreement and refused to comply with its direction to complete beautification work within three months. Having done so, after a lapse of four years it does not stand in the mouth of the appellant to seek continuation of the selfsame agreement in public law domain.

8. The other prayer of the appellant involves compensation. Mr. Bhattacharjee, learned senior Counsel vehemently argues his client had been misled by the respondent Municipality and was induced to enter into the agreement resulting in loss. Though this Court may agree with Mr. Bhattacharjee, that the dispute regarding the right of the Municipality on the land was unknown to the lessee when the contract was executed, there is hardly any material on record to show the licensee was vigilant and had undertaken development work on the

waterbody between October, 2010 and July, 2012 when the dispute with regard to title broke out. Mr. Bhattacharjee, refers to some documents regarding sanctioning of building plan and deposit of fee to the Municipality. These documents even if admitted show preliminary steps but do not convince us with regard to undertaking beautification work at the site for almost two years since 2010. Appellant's case for compensation does not appear to be founded on undeniable facts justifying invocation of public law remedy. However, on this score it is open to the appellant to canvass his grievance before the appropriate Civil Court in accordance with law, if so advised.

9. In view of the aforesaid discussion, we find no merits in this appeal.

Appeal is accordingly dismissed.

10. In view of dismissal of the appeal the connected application being CAN 1 of 2024 is also dismissed.

11. There shall be no order as to costs.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)