

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

**WPA 13468 of 2019
With
IA No: CAN 1 of 2020
With
IA No: CAN 2 of 2020**

**Pradip Dhar
Vs.
United Bank of India & Ors.**

For the Petitioner	: Mr. Ashim Kr. Routh, : Ms. Ananya Mondal. : Mr. Subhayan Banik.
For the Respondent Bank	: Mr. Abhishek Banerjee.

Judgment on : 29/08/2024

Rai Chattopadhyay, J.

1. The writ petitioner's grievance is with respect to the alleged non-compliance with the terms of lease agreement by the respondent bank, also regarding non-payment by the respondent authority of the rent and taxes with regard to the premises leased out to it, by the predecessor of the petitioner. It is stated that the rent amount has remained unpaid from January 2015 till August 27, 2018. Likewise the corporation tax and charge have been due from July 2014 till August 2018. The property was handed over to the petitioner by the respondent/bank on August 27, 2018.

2. Hence, this writ petition, to seek redress as regards the alleged inaction and for direction that:- **(i)** an amount of Rs. 9,84,157/-

be paid by the respondent/bank to the writ petitioner on account of rent calculated from January 2015 to August 2018 and; **(ii)** an amount of Rs. 1,72,193/- on account of corporation tax and such charges calculated from July 2014 to August 2018, be also paid by the respondent/bank – totalling the sum of Rs. 11,56,350/-, with an interest at rate of 12% per annum till the date of its payment.

- 3.** It is necessary that the factual background may be discussed in a nut shell, as follows:-
- 4.** The premises is situated at 94, Bidhan Sarani, Police Station – Shyampukur, Kolkata – 700004. The property devolved upon the writ petitioner by dint of the Court's order and the petitioner is the owner thereof, in exclusion of right of any other person as to the said property.
- 5.** A registered lease deed was executed by the predecessor-in-interest of the writ petitioner on December 13, 2011. The lessee thereof was the respondent/bank. According to the deed as above, the period of lease was for 12 years, effective from August 1, 2011, and ending on August 1, 2023. The rent was also fixed therein. According to the terms of the lease, the lessee bank was to reimburse the entire 100% of the occupier's share of corporation tax and also the entire 100% of the commercial surcharge relating to the occupied space, with effect from August 1, 1998, as per the previous agreement and as per consolidated rate bill of Kolkata Municipal Corporation. The bank started functioning in the premises as above with effect from August 1, 2011, on the basis of renewal of the agreement between the parties, afresh.

6. After death of the original lessor on January 1, 2015, and after the property devolved upon him, the writ petitioner took steps for realization of the rent and corporation taxes from the respondent/bank with respect to the leased out property as above. First of his letters to the respondent in this regard is dated February 7, 2015. The petitioner has mentioned in the writ petition about the date of handing over the vacant possession of the said leased out property by the bank to him, that is, on August 27, 2018. Receipt of rent up to December 2014 is not denied by the writ petitioner. Similarly receipts of corporation taxes and surcharges upto June 2014, is also admitted. Therefore, the petitioner says that since in spite of several letters having been sent to the respondent/bank, it has not acted upon those, by paying rent, tax and surcharges of the residuary period, till delivery of possession of the property to the writ petitioner, which would have been otherwise, the legal dues payable by the bank to the petitioner, in terms of the lease deed as mentioned above. Thus allegedly, the rights and entitlement of the petitioner is jeopardized. The petitioner has sought for redress and appropriate order.
7. Mr. Routh is appearing on behalf of the writ petitioner. He tries to convince the Court as to the fact that in this case there has been gross and blatant disregard of the petitioner's valuable rights, protected pursuant to the agreement entered into by his predecessor and the respondent/bank. According to the terms of agreement, that is, the lease deed dated December 13, 2011, the respondent/bank was to act in a stipulated way specified therein, which it has failed to comply with and also that the writ petitioner was to be benefited by receipt of rent, tax and surcharges as per the stipulations made in the said agreement.

He says that as regards the same the petitioner has been prejudiced in so far as his rights have been curtailed by undue inaction on the part of the respondent/bank. Thus, the writ petitioner has come up before this Court inviting invoking of the extraordinary plenary jurisdiction of this Court under Article 226 of the Constitution of India, to redress his grievance. Mr. Routh has sought for appropriate order for the petitioner in this case.

8. Mr. Banerjee is representing the respondent/bank. The respondent's principle ground is with regard to challenge to the maintainability of the writ petition. Mr. Banerjee would say that, the instant case being basically a money claim by the petitioner on the basis of a contract of him with the bank, which is in the nature of a private contract, between two entities, the writ Court would not have authority to intervene and decide as regards the contractual obligations and money claim of private nature. Mr. Banerjee has submitted that the present case revolves around a contractual and commercial matter. So far as matters of this kind are concerned, Mr. Banerjee is of the opinion that the petitioner should have moved the other fora which are available as the alternative efficacious remedy to him. Mr. Banerjee says that in the guise of violation of statutory or fundamental rights, the writ petitioner cannot be allowed to enforce a lease deed which is nothing but a contract between the two parties, private in nature, having no trapping of public nature of transaction.
9. In support of his submissions Mr. Banerjee has relied on the following three judgments:-
 - (i) ***State of Bihar & Ors. vs. Jain Plastics & chemicals Ltd.***
reported in (2002) 1 SCC 216;

- (ii) ***Binny Ltd. & Anr. vs. V. Sadasivan & Ors.***, reported in ***(2005) 6 SCC 657***;
- (iii) ***Tata Motors Limited vs. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) & ors.***, reported in ***2023 SCC OnLine SC 671***.

10. So far as the merits of the case is concerned, according to Mr. Banerjee the purported lease deed said to have been entered into between the predecessor-in-interest of the writ petitioner and the respondent/bank would be an invalid document. He says that the respondent challenges the veracity of the lease deed as the same is in contravention of the provision under Section 35 (a) of the Indian Stamp Act. He says further that in such an event, when the veracity of the lease agreement is challenged, the same involve proof of facts and that should be on evidence, before a civil forum and the writ court would not be a competent forum for adjudicating on the issues involving factual questions.
11. Further Mr. Banerjee would submit that the respondent/bank would have no involvement or participation in not handing over possession of the property, to the petitioner within the stipulated time. He submits that the record would reveal that the respondent/bank stopped functioning from the said leasehold property, from a date much prior to the date of actual handing over possession. In the interregnum, the respondent/bank has taken all possible endeavor to handover possession of the premises to the owner thereof. However, there has been practical difficulty with respect to the same, he says, as the title of the property was in dispute and pending for

adjudication. It is submitted that only after adjudication of the title with respect to the said property and determination of title of the writ petitioner therein, the possession of the same could have been handed over to the original owner, that is, the petitioner. In such view of the matter Mr. Banerjee suggests that there may not be any order affecting respondents' interests adversely in so far as for the delay, if at all, the respondent bank had no share of participation.

- 12.** On the facts and laws as above, Mr. Banerjee on behalf of the respondent/bank, has sought for dismissal of the writ petition.
- 13.** The writ petitioner, as the successor/owner of the concerned property, claims his rights as per the terms entered into by his predecessor and the respondent/bank, in the lease agreement dated December 13, 2011. Violation of the terms of lease agreement dated December 13, 2011, is alleged due to inaction and willful non compliance by the respondent / bank of the terms and conditions contained therein, allegedly resulting into violation of not only the contractual rights of writ petitioner, emanating from the said lease deed but also his fundamental rights, as protected under the Constitution.
- 14.** Respondent's challenge to such plea of the writ petitioner is on the basis of the character of the agreement, that is, the same is in the nature of a contract, entered into between two parties, which is not for any public purpose, rather private in nature creating leasehold right of the lessee, in lieu of rent, taxes etcetera. It is contended that as there is no public law element involved and the petitioner's claim is merely for recovery of money, the same may not be maintainable in a writ Court. Any

alleged unlawful action of the respondent jeopardizing legal or constitutional rights of the writ petitioner would only be enforceable in a writ Court and not a money claim, the respondent has pleaded.

15. At this stage let us consider what the Supreme Court has held in the case of ***Sanjana M. Wig vs Hindustan Petroleum Corporation Limited*** reported in ***(2005) 8 SCC 242***, ratio of which may bear some relevance in the present case. The Court has said that access to justice by way of a public law remedy would not be denied when a lis involves public law character or involves a question arising out of public law function on the part of the respondent.
16. Similar view has been taken by the Supreme Court in the case of ***Godavari Sugar Mills Limited vs State of Maharashtra*** reported in ***(2011) 2 SCC 439***. The Court says that normally a petition under Article 226 of the Constitution of India will not be entertained to enforce a civil liability arising out of a breach of a contract or a tort to pay an amount of money due to the claimants. The aggrieved party will have to agitate the question in a civil suit. But an order for payment of money may be made in a proceeding, in enforcement of statutory functions of the State or its officers. The Court has held further that, where the lis has a public law character, or involves a question arising out of public law functions on the part of the State or its authorities, access to justice by way of public law remedy under article 226 of the Constitution will not be denied.
17. In both the cases as referred to above, the Supreme Court has held in unequivocal terms that the question as to when such a

discretionary jurisdiction is to be exercised or refused to be exercised by the High Court, has to be determined having regard to the facts and circumstances of each case, where for no hard and first rule can be laid down.

18. Another judgment of the said Court may also be referred to, that is, reported in **(2004) 3 SCC 553 [ABL International Limited & Another vs Export Credit Guarantee Corporation of India Limited & Others]** in which the Court has held, rather reiterated, the settled principle that in an appropriate case the Court has the jurisdiction to entertain a petition involving disputed questions of fact and there is no absolute bar for entertaining a petition, even if the same arises out of a contractual obligation and involves some disputed questions of fact.
19. The facts of the present case may be tested on the anvil of the settled position of law as enumerated above. A claim though arising out of a contractual obligation against the respondent/bank would, therefore, be maintainable, before this Court when exercising power under Article 226 of the Constitution of India, in case the lis between the parties arises out of public law functions of the respondent/bank.
20. Business and function of a nationalized bank is a function addressed to the public at large. Public function doctrine or State action principle is important for the reason that in that case certain constitutional standards have to be adhered to. The essence of public function doctrine is that certain functions are public in nature and performance of such function will be held as State action required to be complying with the Constitutional standards.

21. The Hon'ble Supreme Court in the case ***Zee Telefilms Limited & Another vs UOI & Another*** reported in **(2005) 4 SCC 649**, has held that the Constitution-framers in incorporating Article 12 in the Constitution which defines 'State' and also 'other authorities', was to treat such authority which has been created by law and which has got certain power to make laws, rules and regulations to be included in the term 'other authorities' as found in the Article 12 of the Constitution.
22. A Constitution Bench judgment may also be mentioned, that is ***Sukhdev Singh vs BhagatRam SardarSingh Raghuvanshi*** reported in **(1975) 1 SCC 421**. The Court held that public corporations fulfilling public tasks are subject to Constitutional limitation as the State itself, being a creation of the State. The governing power where ever located must be subject to the fundamental Constitutional limitations. An instrumentality of the government carrying on business for the benefit of public, under the pervasive control of the government is the answer key to the answer of a question if or not the concerned authority has been discharging public function. The same suits apropos the respondent/bank, in this case.
23. ***Tata Motors Limited (supra)*** is a matter relating to a tender process where the Court was examining in judicial review, the legality and propriety of the process of the contract being entered into. There would be no quarrel with the findings of the Court there in, that the power of judicial review by the Court shall only be sparingly and cautiously exercised, with a lot of restraint and only in case of arbitrariness or mala fides or bias or irrationality is made out. However, this has been held on the backdrop of the particular facts of the case that there has been

an unfair process undertaken while accepting tenders by the employer. The fact situation as above is very different from that involved in the present case, that is, the authority having instrumentality of a state, in discharge of its public duties and having utilised the property for public purpose, is now refraining from making good, the rent et cetera, thereof. Thus, the cases are factually distinguishable.

24. In *Binny Ltd (supra)* case the court has provided that judicial review being a public law remedy is available against a body or person performing public law function. The respondent bank has relied on the findings of the Court that a distinction had always been drawn between the public and statutory nature of duties, enforceable by a writ of mandamus and the duties arising merely from contract, that contractual duties are enforceable as a matter of private law by the ordinary contractual remedies, in an appropriate forum. The said case has, however, not dealt with alleged violation of the contractual liability by a public authority, in discharging public duties. As a matter of fact, in the said judgment, the Court has held that under the Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued, even against a private authority, however, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in discharge of public function. For this reason, the instant judgment is found more helpful for the petitioner, than it is for the respondent/ bank.

25. The eternally settled principal has been discussed in the case of *Jain Plastics (supra)*, that writ is not the remedy for enforcing contractual obligations. Though the Court observes that

existence of an alternative remedy does not affect the jurisdiction of the Court to issue writ. As to when a writ can be issued, is answered by the Court in other matters, referred to by the respondent/bank itself, that is, when there is a violation, inaction, arbitrariness by a public authority in discharge of its public functions and duties.

26. In this perspective, the petitioner's case is to be assessed. Grant of lease of the premise to the respondent/bank, is undisputed. Mr. Banerjee, for the respondent, though has taken a point regarding impounding of the lease deed and thus regarding its non-maintainability, the same may not be a sound defence for the respondent authority, it having already acted upon the same, that too, without raising any objection to the same. The question would be whether there is any inaction or arbitrariness in discharge of its public functions, by the respondent authority. The answer should be according to the ratio in the judgment in ***Sukhdev Singh's case (supra)***. The respondent/bank which is carrying on business for the benefit of public at large, has utilised the premise for the sole purpose of the same. Therefore, utilisation of the said premise for public function and purpose, is undeniable. Performance of obligations with respect to the said property by the bank authority, is unavoidable and mandatory, as per the constitutional scheme. Therefore, obligation of the bank to adhere to the constitutional standards in its functionality, is inescapable.

27. To comply with the same, the respondent/bank would have been drawn to act promptly, fairly, equitably and discharge function without any tinge of arbitrariness. Since, neither execution of the lease agreement is denied, nor the usage of the

property by the bank for the purpose of banking business, also that the fact of handing over of the same to the petitioner on August 27, 2018, is undisputed, the Court finds that the respondent/bank was bestowed with a bounden duty to discharge towards the petitioner, in terms of the lease agreement entered into between the parties, on December 13, 2011. A failure of the same, when apparent, is a manifestation of unfairness and iniquitousness.

- 28.** To answer the question whether there has been inaction, iniquitous disposition and arbitrariness in not adhering to the duties to be discharged by the bank towards the petitioner, with regard to what the parties have agreed to in the said lease deed, the Court finds the answer in affirmative. The challenge raised as to the very maintainability of the writ petition is thus to be negated.
- 29.** All above prompts this Court to allow this writ petition. Hence, the writ petition WPA No. 13468 of 2019 is allowed. Connected applications, if any, are disposed of.
- 30.** The respondent bank shall immediately pay to the petitioner, on account of rent payable to the petitioner, in terms of the lease deed dated December 13, 2011, from January 2015, till August 27, 2018, amounting to Rs. 9,84,157/-.
- 31.** The respondent bank shall immediately pay to the petitioner, on account of corporation tax and charges, in terms of the lease deed dated December 13, 2011, from July 2014 to August 2018, amounting to Rs. 1,72,193/-.

- 32.** The respondent bank shall immediately pay to the petitioner, interest, at the present day rate of that for savings account in a nationalised bank, calculated from the month of September, 2018, till the date of actual payment of the same.
- 33.** The respondent/bank shall take steps, as mentioned above immediately but not later than a period of four weeks from the date of communication of this order.
- 34.** Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Rai Chattopadhyay, J.)