

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

M.A.T. 2069 of 2022

With

CAN 1 of 2023

With

CAN 2 of 2023

M/s. Nilgiri Estates LLP.

Vs.

J.J. Automotive Private Limited & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellants : Mr. Shakti Nath Mukherjee, Ld. Sr. Adv.,
Mr. Rahul Karmakar, Adv.
Mr. D. Upadhyay, Adv.
Ms. Munmun Majumder, Adv.
Mrs. S. Mukherjee, Adv.

For the Respondents : Mr. Surajit Nath Mitra, Sr. Adv.,
Mr. Sattik Rout, Adv.
Mr. Shounak Mukhopadhyay, Adv.
Ms. S. Bose, Adv.
Mr. S. Routh, Adv.

For the KMC : Mr. Biswajit Mukherjee, Adv.
Mr. T. Dasgupta, Adv.

For Orders : 30.01.2024

Arijit Banerjee, J. :-

1. This appeal is directed against two orders dated November 14, 2022 and December 2, 2022, respectively, passed by a learned Single Judge disposing of WPA

no. 18139 of 2022 filed by the respondent nos. 1 to 11 herein. By the orders impugned in this appeal, the learned Judge set aside an order dated May 14, 2022, passed by the Assessor Collector (South), Kolkata Municipal Corporation, adding the name of the appellant as lessee of the property in question.

2. The relevant facts of the case which are somewhat bizarre, in brief are that one Indranath Nandi was the owner of a property situate at 8/2 Palm Avenue, Kolkata-700019, measuring about 97 kathas. He sold the said property by executing a registered deed of conveyance dated June 29, 1944, in favour of one Nabab Moulabi Ali, Haider Khan & Ali Asgar Khan (in short "the Moulabis") at and for a consideration of Rs. 1, 34, 000/-. The Moulabis took possession of the said property and got their names mutated as owners thereof in the municipal records.

3. To make payment of the consideration amount of Rs. 1,34,000/-, the Moulabis obtained a loan of Rs. 75,000/- from one Kashinath Roy.

4. An agreement dated June 29, 1944, was executed by and between the Moulabis and Kashinath to the effect that the Moulabis would repay the sum of Rs. 75,000/- within 12 years, failing which, they would be bound to execute and register a formal deed of conveyance or alternatively a deed of perpetual lease, in respect of the said property, in favour of Kashinath. The Moulabis paid the sum of Rs. 75,000/- as borrowed from Kashinath to Indranath Nandi, the original owner of the property.

5. As regards the balance amount of Rs. 59,000/- out of the consideration amount of Rs. 1,34,000/-, the sale deed dated June 29, 1944, executed in favour of the Moulabis contained a condition for mortgaging the said property in favour of Indranath as security for the balance sum of Rs. 59, 000/-.

6. The Moulabis failed to pay the sum of Rs. 59,000/-. Indranath filed a suit for redemption of mortgage before the learned Chief Judge, Second Court at Alipore being TS no. 284 of 1951. The suit was decreed in favour of Indranath on

December 6, 1954. The decree was put into execution by filing Title Execution No. 5 of 1955.

7. The Moulabis also failed to repay the amount of Rs. 75,000/- that they had borrowed from Kashinath. As per the agreement between them, the Moulabis executed a deed of perpetual lease in favour of Kashinath in respect of the concerned property. It was an unregistered lease deed. Indranath Nandi was a confirming party to the deed of perpetual lease dated October 27, 1955.

8. The said property was put up for sale in Title Execution No. 5 of 1955 instituted by Indranath Nandi for execution of the decree that he obtained in TS No. 284 of 1951, the suit filed by him for redemption of mortgage. One Amal Kumar Ghosh, Subrata Ghosh and Debabrata Ghosh (in short 'Ghosh Brothers'), purchased the said property in auction sale. The sale was confirmed in their favour on December 2, 1968, and sale certificate, as contemplated under Order 21 r. 94 of the Code of Civil Procedure, was issued in their favour on October 9, 1969. The Ghosh brothers mutated their names as owners of the said property in the records of Kolkata Municipal Corporation (in short "KMC").

9. Sometime in the 1970's, one Ajita Debi Bagchi started claiming ownership rights over the property in question. To repel the same, Kashinath, in his capacity as lessee in respect of the property, instituted a suit for declaration of his right, title and interest, before the learned Second Sub-Judge at Alipore being TS No. 148 of 1977, which was subsequently transferred to the Court of 6th Assistant District Judge, at Alipore and renumbered as TS No. 154 of 1980.

10. An agreement dated March 1, 1979, was entered into by and between the Ghosh brothers as owners of the said property and one Basant Kumar Almal for sale of 90 kathas out of 97 kathas of land comprised in the said property, by the Ghosh brothers to Basant Kumar Almal. Almal filed Suit No. 609 of 1980 in the Alipore Court against the Ghosh brothers for specific performance of the aforesaid

agreement. The said suit was disposed of by a compromise decree on January 18, 1982. A deed of conveyance dated May 9, 1985, was executed in favour of Basant Kumar Almal by the Ghosh brothers. Consequently, Almal became the owner of 90 kathas of land and the Ghosh Brothers retained 7 kathas of land.

11. On March 6, 1982, Kashinath died intestate living behind one son and 2 daughters as his only legal heirs.

12. On March 11, 1987, the legal heirs of Kashinath executed a registered deed of perpetual lease / a deed of assignment in favour of one M/s. Khaniva Housing (India) Private Limited.

13. On August 31, 1987, TS No. 154 of 1980, which was instituted by Kashinath against Ajita Debi Bagchi, claiming declaration of his rights as lessee in respect of the said property, was decreed and the legal heirs of Kashinath were declared to be lawful lessees in respect of the concerned property.

14. In 1988/1989, Basant Kumar Almal and his nominees being the writ petitioners in the present round of litigation, separated their holding from that of the Ghosh Brothers. 90 kathas out of 97 kathas of land was recorded in the names of the writ petitioners as owners in the municipal land records.

15. On August 30, 1990, M/s. Khaniva entered into a memorandum of understanding with M/s. Nilgiri Estates LLP (the present appellant) for assignment of the perpetual lease in respect of the said property in favour of Nilgiri at a premium of Rs. 1,00,000/- per katha. Nilgiri filed a suit for specific performance of the said memorandum of understanding in the Alipore Court being CS no. 186 of 1995. M/s. Kanhaiva filed a suit claiming a declaration that the memorandum of understanding dated August 30, 1990, stood cancelled, being TS 257 of 1995.

16. An application had been made by M/s. Khaniva before the KMC authorities for mutating its name in the records as a lessee. By an order dated May 21, 2013, the Chief Manager (Revenue) of KMC rejected such application.

17. As regards CS no. 186 of 1995, the parties thereto, viz, Nilgiri and M/s Khanvia arrived at a compromise. A deed of assignment dated June 5, 2013, was executed by M/s. Khanvia in favour of Nilgiri. Accordingly, the suit was decreed on compromise on July 8, 2013.

18. On February 10, 2020, Nilgiri applied to KMC for mutating its name as lessee of the said property.

19. On May 14, 2022, the Assessor Collector (South), KMC passed an order to add the name of Nilgiri as lessee, in the records of KMC.

20. On June 27, 2022, the deed of assignment executed by M/S. Khanvia in favour of Nilgiri and the compromise decree passed in CS no. 186 of 1995 were registered.

21. Subsequently KMC raised demand on Nilgiri for arrear tax in respect of the said property treating Nilgiri to be the person responsible to pay such tax as being in possession of the property. Nilgiri claims to have paid such arrear tax.

22. However, Basant Lal Almal and his nominees, in their capacity as owners of 90 kathas out of 97 kathas comprised in the said property, approached the learned Single Judge by filing the present writ petition being WPA 18139 of 2022, challenging the order dated May 14, 2022, passed by the Assessor Collector (South), KMC, to include the name of Nilgiri as lessee in respect of the concerned property. The learned Judge by one of the impugned orders, i.e., the one dated November 14, 2022, recorded the facts of the case.

23. Thereafter, on December 2, 2022, the learned Judge passed an order disposing of the writ petition. The relevant portion of the said order reads as follows:-

“The documents placed before the Court does not in any manner indicate that there has been any declaration as regards the leasehold right of the said property in favour of Nilgiri.

In the absence of an authoritative declaration passed by the court of competent jurisdiction as regards the leasehold right of Nilgiri, it was not proper for the respondent authority to record the name of Nilgiri as recorded owner of the subject premises.

The petitioners have annexed documents to show that there is no outstanding amount on account of unpaid property tax in respect of the subject premises at the end of the petitioners. The petitioners all along cleared the property tax of the property. In such a situation, it was not proper for the Corporation to incorporate the name of Nilgiri in the records of the Corporation as recorded owners of the subject property.

The impugned order of the Assessor Collector mentions that the earlier order of the Chief Manager (Revenue) dated 21st May, 2013 dealt with the ownership of the property and presently the leasehold right of the property has been dealt with. It appears that the Assessor Collector usurped the jurisdiction of the civil court and decided the leasehold right of the property which is not permissible and contrary to the settled principles of law.

The petitioners deny and dispute the leasehold right of Nilgiri. This Court is not the proper forum to adjudicate civil rights of the parties. The Chief Manager (Revenue) considered the matter and passed order in 2013. The said order has been acted upon by the parties. There is hardly any change of circumstances for reopening the issue. Order passed by this Court on a separate issue cannot be the reason to unsettle the position.

In view of the above, the impugned order passed by the Assessor Collector (South) is liable to be set aside and is accordingly set aside. All consequential steps pursuant to the impugned order are also set aside and quashed. The Assessor Collector (South) is directed to take consequential steps and correct the records accordingly.”

24. Being aggrieved, the private respondent in the writ petition has come up by way of this appeal.

25. Appearing for the appellant, Mr. Sakti Nath Mukherjee, learned Senior Advocate, argued that the learned Judge erred in observing that it was not proper for KMC to incorporate the name of Nilgiri in the records of KMC as owners of the concerned property. That was not what KMC did. KMC included the name of Nilgiri as lessee and person liable to pay property tax.

26. Mr. Mukherjee then submitted that the lease hold interest of Nilgiri flows from that of Kashinath. Even though the deed of perpetual lease executed by the Moulobis in favour of Kashinath was unregistered, since possession was made over to Kashi Nath and there was payment of rent by him to the Moulabis, a monthly tenancy would be inferred, even if it is argued that the perpetual lease failed for non-registration of the lease deed. In support of this proposition learned Senior Advocate relied on the decisions of the Hon'ble Supreme Court in the cases of ***Ram Kumar Das v. Jagdish Chandra Deo Dhabal Deb & Anr., reported at 1951 SCC OnLine SC 73*** and ***Biswabani Pvt. Ltd. v. Santosh Kumar Dutta & Ors., reported at (1980) 1 SCC 185***.

27. Mr. Mukherjee then cited the Supreme Court decision in the case ***of Dev Raj Dogra & Ors. v. Gyan Chand Jain & Ors., reported at (1981) 2 SCC 675*** in support of the proposition that even after suffering a mortgage decree in the suit filed by Indranath, the Moulobis were competent to execute the lease in favour of Kashinath since they were still in possession.

28. Mr. Mukherjee then referred to pages 344, 537 (541) and 82(88) of the stay application in support of his submission that possession of the concerned property was never made over to Almal or his nominees.

29. Learned Senior Counsel then submitted that it is the statutory duty of KMC to record the names of the owner, lessee if any, and any other occupier who may even be a trespasser, in respect of a particular property. In the present case pursuant to the order of the Assessor Collector (South), KMC, the KMC records were rectified by including the name of Nilgiri as the lessee. This was a perfectly justified exercise. By the impugned order learned Single Judge has nullified the same. In this connection Mr. Mukherjee relied on the decision of the Hon'ble Supreme Court in the case of **Calcutta Gujarati Education Socieity & Ors. v. Calcutta Municipal Corpn. & Ors., reported at (2003) 10 SCC 533** and also referred to Section 181 of the KMC Act, 1980.

30. Learned Counsel then relied on an unreported decision of a learned Judge of this Court in the case of **Bimal Kumar Ghosh v. KMC and Others (WP No. 350 of 2013), rendered** on November 23, 2017, in support of his submission that in an extreme case and where serious disputes of title are involved, there may be a joint recording of the names of the rival claimants in the records of KMC.

31. Learned Counsel submitted that recording the name of the Almals as owners of the concerned premises, does not prevent KMC from recording the name of the appellant as lessee.

32. It was finally submitted that the appellant has filed a suit for declaration of title as a lessee in respect of the premises in question and has obtained an interim order of injunction in its favour.

33. Appearing for the respondents/writ petitioners, Mr. Surajit Nath Mitra, learned Senior Advocate, drew our attention to one of the impugned orders i.e., the order dated December 2, 2022, whereby the writ petition was disposed of. Learned

Counsel highlighted the following observations of the learned Single Judge; “in the absence of an authoritative declaration passed by the Court of competent jurisdiction as regards the leasehold right of Nilgiri, it was not proper for the respondent authority to record the name of Nilgiri as recorded owner of the subject premises. The impugned order of the Assessor Collector mentions that the earlier order of the Chief Manager (Revenue) dated 21 May, 2013 dealt with the ownership of the property and presently the lease-hold right of the property has been dealt with. It appears that the Assessor Collector usurped the jurisdiction of the Civil Court and decided the leasehold right of the property which is not permissible and contrary to the settled principles of law.”

34. Mr. Mitra submitted that taking cue from the observations of the learned Single Judge, Nilgiri has filed a suit against the writ petitioners herein, which is pending in the 2nd Court of the learned Civil Judge (Junior Division) at Alipore, being Title Suit no. 169 of 2023. In particular, our attention was drawn to paragraphs 25 and 33 of the plaint of the said suit, which read as follows:-

“25. The plaintiff was put into possession in the suit property back in the year 2013. Nobody attempted to create any obstruction to the possession of the plaintiff. Accordingly, the plaintiff applied before the Kolkata Municipal Corporation to have its name mutated. During the hearing of the mutation, it is for the first time that the plaintiff faced objection from the alleged owners of the suit property. Despite such objection, the mutation was granted. The said mutation order being assailed before the Hon’ble High Court at Calcutta was set aside with an observation that unless a Civil Court declares that status of the plaintiff to be that of a Lessee, mutation in favour of the plaintiff cannot be effected. It is for the first time that the plaintiff received a threat towards their status and

possession over the suit property and as such the necessity to file the present suit was felt.

33. The cause of action of the above suit arose on and from July 8, 2013 when the plaintiff acquired the leasehold right in respect of the suit property and further on May 14, 2022 when the name of the plaintiff was mutated by the Kolkata Municipal Corporation as Lessee over the suit property and finally on November 14, 2022 and December 2, 2022 when the Hon'ble High Court at Calcutta had set aside the mutation order on the ground that unless a civil court decides on the status of the plaintiff as Lessee, no mutation can be granted and again on 07.02.2023 when the defendants threatening the plaintiff to enter the suit property and take the possession suit property thereof which is still continuing till date and the plaintiff and its men and agents are facing regular threats of dispossession from the suit property at 8/2, Palm Avenue, P.S. Karaya, Kolkata – 700019 within the jurisdiction of this learned Court.”

Prayers (a) and (b) of the plaint read as follows:-

“a. A declaration that the plaintiff is a perpetual lessee with respect to the suit property under the defendants;

b. A decree for perpetual injunction restraining the defendants and their men, agents and servants from disturbing the peaceful possession of the plaintiffs over the suit property and/or from attempting to take forcible possession of the suit property in any manner whatsoever;”

35. Mr. Mitra submitted that by filing the aforesaid suit, Nilgiri has accepted and acted in terms of the impugned orders of the learned Single Judge. Learned Counsel further submitted that Nilgiri has claimed a declaration that it is a

perpetual lessee in respect of the property in question. Hence, it cannot also run the case that it is a monthly tenant in respect of the said property. He submitted that by filing the suit, Nilgiri has admitted that there is a serious dispute regarding its status as lessee of the said premises. Until the suit is decided in its favour, Nilgiri cannot come on Municipal records as lessee of the concerned premises.

36. Mr. Mitra then referred to the order dated May 21, 2013, passed by the Chief Manager, (Revenue), rejecting the application of Khaniva Housing (India) Pvt. Ltd., Nilgiri's predecessors-in-interest, for mutating its name in the Municipal records as perpetual lessee in respect of the concerned premises. He submitted that Khaniva did not challenge the said order before any competent forum. Nilgiri having stepped into the shoes of Khaniva, the said order is binding on Nilgiri.

37. Learned Senior Counsel then drew our attention to Nilgiri's application for mutation made on February 10, 2020, to the Assessor Collector (South), Kolkata Municipal Corporation. He pointed out that the ground mentioned for mutation is "transfer except under Cooperative Societies Registration Act and WB Apartment Ownership Act". However, the writ petitioners did not transfer any interest in respect of the concerned property, in favour of Nilgiri. Hence, the writ petitioners did not also issue any notice of transfer to KMC as required under Section 183 of the Kolkata Municipal Act. There is no dispute that the writ petitioners are the persons who are primarily liable for payment of property tax in respect of the disputed premises. In this connection our attention was drawn to property tax bills raised by KMC on the writ petitioners.

38. Mr. Mitra then drew our attention to the consent decree passed in the suit filed by Nilgiri against Khaniva for specific performance of the agreement to assign the perpetual lease in respect of the concerned property in favour of Nilgiri. In

particular, our attention was drawn to Clause 8 of the Terms of Settlement in accordance with which the consent decree was passed, which reads as follows:-

“8. In order to complete the Assignment of aforesaid, Khaniva shall execute and register a Deed of Assignment as per the draft attached hereto and marked as “A” in favour of Nilgiri simultaneously with the execution of these terms of settlement. If however, for any reason whatsoever, it is not possible to execute and register such Deed of Assignment, simultaneously with the execution of these terms of settlement, Khaniva shall grant a power of Attorney in favour of Sri Pankaj Mathur, son of Sri Mahesh Chandra Mathur of 8/1, Middleton Row, Kolkata – 700 071 and Sri Anil Kumar Khandelia, son of Sri Vishwanath Khandelia, aged about 51 years, of 8/1, Middleton Row, Kolkata – 700 071, nominated by Nilgiri, authorizing them to deal with and/or do all such acts, deeds and things in respect of all and any of the right title and interests of Khaniva, in the schedule property morefully mentioned in the said Deed of Assignment, as they may think fit and appropriate. Such Power of Attorney shall be as per the draft approved by the parties. All the costs, charges and expenses shall be borne and paid by Nilgiri.”

39. Learned Counsel said that no Deed of Assignment or power of attorney executed by Khaniva in favour of Nilgiri is on record. Hence, Nilgiri cannot show any right, title or interest in respect of the property in question.

40. Learned Counsel then referred to Clause 13 of the Terms of Settlement and submitted that the same contemplated handing over of symbolic possession of the property in question to Nilgiri by Khaniva, and no further. This indicates that Nilgiri is not in actual physical possession of the property in question.

41. Mr. Mitra then submitted that the consent decree whereby Nilgiri's suit against Khaniva was disposed of has been registered. He referred to a document obtained from the concerned registry office to show that stamp duty has been paid in accordance with Article 45 of Schedule 1A to the Indian Stamp Act, 1899. However, Article 45 pertains to instrument of partition as defined by Section 2(15) of the Stamp Act and provides for payment of Stamp duty at the rate of $\frac{1}{2}$ per cent of the market value of the separate share or shares of the property. Learned Counsel submitted that Article 45 has no relevance or application in the facts of this case. The relevant provision is Article 11 of Schedule 1A to the Indian Stamp Act. That Article provides that a Deed of Assignment has to be stamped as if it is a conveyance or transfer of lease, as the case may be.

42. Mr. Mitra next submitted that sale of the property was confirmed in favour of the Ghosh brothers on October 9, 1969. The suit that Kashinath had filed against Ajita which was renumbered as TS 154 of 1980, was decreed on August 31, 1987. The Ghosh brothers or their successors in interest were not parties to the said suit qua owners of the property. Hence, the decree in TS 154 of 1980 would not bind the Ghosh brothers or their successors-in-interest.

43. Mr. Mitra then referred to the order of the Chief Manager, (Revenue), KMC, which was passed in the year 2013, rejecting the request of the appellant's predecessor-in-interest (Khaniva) to mutate its name as lessee of the property in question. In that order, the Chief Manager had observed, inter alia, that in view of the dispute regarding title, adjudication by the Civil Court is necessary. Mr. Mitra submitted that the appellant's predecessor-in-interests did not challenge that order of the Chief Manager before any competent forum.

44. As regards possession, Mr. Mitra referred to the format of Deed of Assignment that was to be executed by Khaniva in favour of Nilgiri. Clause 2 (d) of the deed

contemplates handing over of symbolic possession only of the property by Khaniva to Nilgiri. This also militates against Nilgiri's claim that it is in physical possession of the property in question.

45. Referring to the suit filed by Kashinath against Ajita Debi, which was decreed declaring the legal heirs of Kashinath to be the lessees in respect of the concerned property, Mr. Mitra submitted that such a declaration cannot bind the present writ petitioners or anybody who was not a party to the suit.

46. Mr. Mitra then submitted that although in the impugned order at one or two places the learned Single Judge has mentioned that Nilgiri is claiming ownership right in respect of the property in question that is obviously a slip. On an overall reading of the order it is clear that Nilgiri was claiming leasehold right. Such an obvious error in the order cannot be relied upon by Nilgiri to contend that the order is bad.

47. Mr. Mitra then dealt with the decisions cited by Mr. Mukherjee. As regards the decision reported at AIR 1952 SC 23, Mr. Mitra submitted that in that case the Hon'ble Supreme Court held that when a lease for ten years is sought to be created by an unregistered document, the same actually results in creation of a monthly tenancy. That case has no relevance in the facts of the present case where the consistent case of the appellant has been that it is a perpetual lessee of the premises in question.

48. As regards the decisions reported at **AIR 1981 SC 981, (1980) 1 SCC 185 and AIR 1985 CAL 37**, Mr. Mitra said that the issues involved in those cases were totally different and the decisions in those cases are not germane in the facts of the present case.

49. In so far as the decision reported at **(2003) 10 SCC 533** is concerned, Mr. Mitra submitted that contrary to what Mr. Mukherjee argued, this decision does not say that all occupants of a property must be brought on record or mutated by the Kolkata Municipal Corporation.

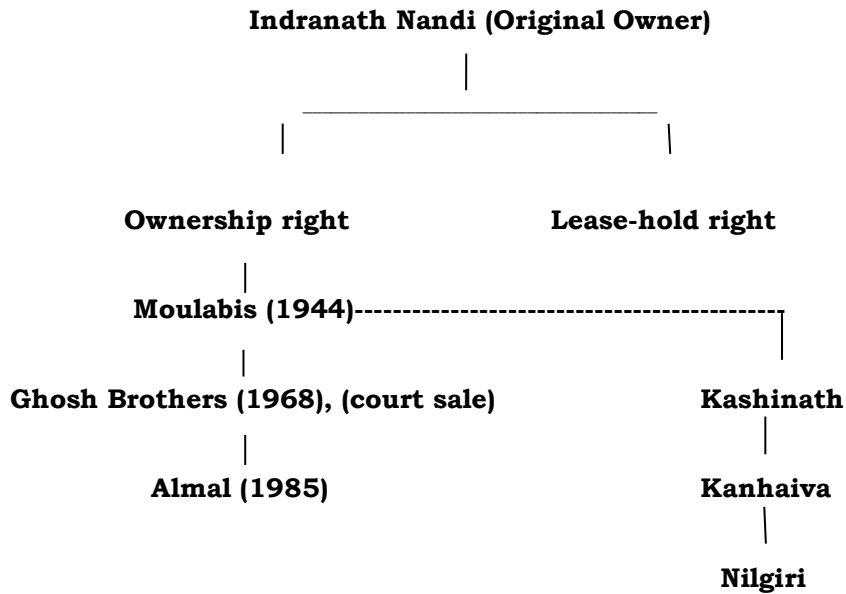
50. Finally, as regards the unreported decision of a Single Judge of this Court in the case of Bimal Kumar Ghosh, *supra*, Mr. Mitra submitted that the said decision in fact favours the respondents/writ petitioners.

51. Appearing for Kolkata Municipal Corporation, Mr. Biswajit Mukherjee, learned Advocate, submitted that the Assessor Collector passed the order impugned by the writ petitioners before the learned Single Judge, on the basis of the decree passed by the Court in the suit filed by Nilgiri against Khaniva. The earlier order of the Chief Manager (Revenue) dealt with ownership rights in respect of the concerned premises. The present order of the Assessor Collector deals with lease hold rights in respect of the said premises.

Court's view

52. I have given my anxious consideration to the rival contentions of the parties.

53. Almal and/or his associates/nominees are admittedly the owner of the subject property and their names are recorded as such in the KMC records. Nilgiri claims lease-hold interest in respect of the same property. The devolution of ownership right on Almal and his associates and devolution of lease-hold right on Nilgiri as claimed by it can be conveniently portrayed in the form of a table.



53. Nilgiri's application to the Assessor Collector (South), for mutating the name of Nilgiri as perpetual lessee in respect of the concerned property was allowed by an order dated May 14, 2022. This was challenged by the Almals and/or their associates/nominees before the learned Single Judge. The learned Judge allowed the writ application and set aside the order of the Assessor Collector. As a result, KMC removed the name of Nilgiri as lessee from its records. Hence, this appeal at the instance of Nilgiri.

54. The sole question is whether or not the learned Single Judge was justified in setting aside the order of the Assessor Collector (South) whereby Nilgiri's name was added in the KMC records as lessee of the subject premises? In my considered view, the learned Judge was right in allowing the writ petition for the reasons hereinafter stated.

55. Firstly, the predecessor-in-interest of Nilgiri, namely, Khaniva, had applied to the Chief Manager (revenue) KMC for bringing its name on record as lessee of the concerned premises. By an order dated May 21, 2013, the Chief Manager rejected such application, observing, inter alia, as follows:-

“c) In view of A and B above, it can be stated that before the execution of the Deed of Assignment in favour of Khaniva housing (India) Private Limited by the legal heirs of Kashinath Roy on 11.3.1987, the competent court (s) of law had already settled the matter in the several suits/decrees etc in favour of Amal Kumar Ghosh & Ors. as well as Basant Kumar Almal & Ors.

d) So, it can be stated that only a competent court of law can now decide the matter in the year 2013. It is perhaps not the duty of KMC to go and enter into the details of right, title and property in question of the subject premises, when so much litigation were involved and orders/decrees passed not only by the competent civil courts but also by the Hon’ble High Court at Calcutta.

e) Hence, there is no scope for KMC to amend / modify the records, but only to maintain status quo as on date, till any competent court of law decides the matter further, and gives its verdict specifying the next course of action.”

56. The aforesaid order of the Chief Manager was not challenged by Khaniva before any competent forum. Nilgiri having stepped into the shoes of Khaniva, it would be bound by the said order. Nilgiri is in the same position as Khaniva was. Hence, the Assessor Collector (South), ought not to have allowed Nilgiri’s application for mutating its name as lessee in respect of the concerned property.

57. Secondly, Clause 8 of the terms of settlement in accordance with which Nilgiri’s suit against Khaniva for specific performance of the agreement to assign the perpetual lease in respect of the concerned property, was decreed (which has been extracted above) contemplated execution of a Deed of Assignment by Khaniva in

favour of Nilgiri or, in the alternative grant of a power of attorney by Khaniva in favour of one Pankaj Mathur, and Anil Kumar Khanderia nominated by Nilgiri, authorising them to deal with and do all things and acts in respect of the subject property. As rightly pointed out by Mr. Mitra, learned Senior Advocate representing the writ petitioners, no Deed of Assignment or Power of Attorney executed by Khaniva in favour of Nilgiri or its nominee has been brought on record by Nilgiri. Hence, it is doubtful as to whether or not the assignment of the alleged perpetual lease in favour of Nilgiri has in fact taken place.

58. Thirdly, Clause 13 of the aforesaid terms of settlement contemplates handing over of 'symbolic position' of the concerned property by Khaniva to Nilgiri and records that Nilgiri shall be entitled to receive rents and occupation charges from the occupiers thereof. This would indicate that Nilgiri is not in actual physical possession of the property in question.

59. Fourthly, as pointed out by Mr. Mitra, although the consent decree whereby Nilgiri's suit for specific performance against Khaniva was disposed of, has been registered, it appears that stamp duty thereon has been paid in accordance with Article 45 of Schedule 1A to the Indian Stamp Act, 1899. Article 45 prescribes the stamp duty payable on a Deed of Partition as defined by Section 2(15) of the Stamp Act, i.e, @ half per cent of the market value of the separate share or shares of the property. In fact, stamp duty should have been paid in terms of Article 11 of Schedule 1A to the Indian Stamp Act which lays down that a Deed of Assignment has to be stamped as if it is a conveyance or transfer of lease, as the case may be. Hence, it appears that the applicable stamp duty has not been paid for registration of the consent decree. What the effect of such inadequate stamping would be, may not be necessary to be decided in the present appeal. However, it definitely would

tend to indicate some weakness in the Nilgiri's claim as perpetual lessee of the property in question.

60. Fifthly, the deed of perpetual lease executed by the Moulobis in favour of Kashinath, from whom Nilgiri's claim of being a lessee flows, was not registered. Mr. Mukherjee, learned Senior Counsel representing Nilgiri, argued on the strength of the decisions in the cases of Ram Kumar Das, (supra) and Biswabani Private Limited, (supra), that even if it is accepted, that the perpetual lease failed because of lack of registration of the lease deed, since possession of the concerned property was made over to Kashinath by the Moulobis and there was payment of rent by Kashinath to the Moulobis, a monthly tenancy in favour of Kashinath would be inferred. This argument of Nilgiri is inconsistent with its claim that it is a perpetual lessee in respect of the property in question. If there was no valid lease in favour of Kashinath, no lease-hold interest could devolve upon Kanhaiva or through Kanhaiva upon Nilgiri.

Admittedly the recorded owners of the property in question, in the papers of KMC, are the successors-in-interest of Basant Almal who had purchased the property from the Ghosh Brothers. Neither Basant Almal nor his successors-in-interest ever granted any lease in respect of the property in question in favour of Nilgiri or any of its predecessor-in-interests. Neither the Ghosh Brothers nor the Almals were parties to the suit filed by Kashinath against Ajita Debi for a declaration that Kashinath was a perpetual lessee in respect of the property in question. Though the suit was decreed in favour of the legal heirs of Kashinath, the decree would not bind the Ghosh brothers or the Almals.

62. Sixthly and most importantly, Nilgiri has accepted and acted upon the orders of the learned Judge impugned in this appeal. Nilgiri has filed a suit before the competent Civil Court for a declaration that it is a perpetual lessee with respect to

the suit property which is the same property involved in the present litigation. Therefore, Nilgiri itself acknowledges that there is a cloud over its alleged status as perpetual lessee in respect of the concerned property. To clear that cloud, a declaration has been sought for from a civil court. Till such a declaratory decree is obtained by Nilgiri, its right, title or interest in respect of the concerned property qua perpetual lessee, will be in doubt. No civil court has ever adjudicated the legality or otherwise of Nilgiri's claim as being a perpetual lessee in respect of the concerned property. Hence, in my considered opinion, the Chief Manager (Revenue), in his order dated May 21, 2013, while rejecting Khaniva's application for being mutated as perpetual lessee, rightly observed that till a competent forum decides the correctness of such claim, no correction or amendment in the KMC records should be carried out. The Assessor Collector (South) fell in error in allowing Nilgiri's application for mutating its name as the perpetual lessee. The learned Single Judge rightly set aside the order of the Assessor Collector.

63. Learned Senior Counsel for Nilgiri vociferously argued that the learned Single Judge was confused on facts. At two places, the learned Judge has observed that Nilgiri's name ought not to have been recorded as owners of the property in question. Nilgiri never applied for its name being brought on record as owners of the property. It never claimed ownership status. The learned Judge proceeded on incorrect factual basis in passing the impugned orders.

I am unable to agree with Mr. Mukherjee, an order has to be read as a whole. In this case, there are two orders which are the subject matter of challenge in this appeal; an order dated November 14, 2022 wherein the learned Judge records the basic facts of the case and an order dated December 2, 2022, which is really the judgment and order. Reading the two orders together and meaningfully, it is quite clear that the two instances where the learned Judge observed that it was

erroneous on the part of the Assessor Collector to mutate Nilgiri's name as the owner of the concerned property, are in-advertent errors not affecting the merit of the order in any manner. The fact remains that Nilgiri's name was brought on record as lessee and the learned Judge has negated such order of the Assessor Collector.

64. In fine, there are question marks as regards the alleged status of Nilgiri as lessee of the concerned property. To erase such question marks, Nilgiri has filed a civil suit taking a cue from the order of the learned Single Judge. Nilgiri has therefore acted in terms of the learned Single Judge's order. If it succeeds in the pending civil suit, there will be no difficulty in having its name recorded as lessee in respect of the concerned property in the papers of KMC. However, till then, Nilgiri cannot insist on the same.

65. Last but not the least, the view taken by the learned Single Judge is a highly plausible and reasonable view. It is established law that the Appeal Court does not interfere unless the order impugned is palpably wrong. In the present case I not only find no infirmity in the order of the learned Judge, but with respect, it is an eminently sensible order.

66. In view of the aforesaid, the appeal and the connected application are dismissed. There will be no order as to costs.

67. Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)