

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Krishna Rao

CS 8 of 2016

Karnani Properties Limited

Versus

Karnani Mansion Residents' Association & Ors.

Mr. Sabyasachi Choudhury

Mr. Neelesh Choudhury

Ms. Anuradha Poddar

Mr. Shounak Mukhopadhyay

... for the plaintiff.

Hearing Concluded On : 12.06.2024

Judgment on : 03.07.2024

Krishna Rao, J.:

1. The plaintiff has filed the present suit for declaration of the Circular dated 24th December, 2015 issued by the defendant no.2 and Circular dated 31st December, 2015 issued by the defendant no.3 are illegal, null and void and other allied reliefs.

- 2.** On receipt of writ of summons, defendants entered appearance in the suit but have not filed written statement. The defendants have filed an application being G.A. No. 6 of 2022 praying for extension of time to file Written Statement. This Court by an order dated 1st September, 2023, disposed of the said application by extending time to file written statement within a week from the date of the order, subject to payment of Rs. 20,000/- but the defendants have neither paid the cost nor have filed any written statement. Therefore, by an order dated 9th February, 2024, this Court fixed the matter as undefended suit.
- 3.** The plaintiff is the owner of Premises Nos. 21, 23, 25A, 25B, 27A, 27B, 29, 31, 33, 35, 37, 39, 43, 45, 47, 55 and 57, Park Street, Kolkata which comprise approximately 160 cottahs of land. All the premises are adjacent to each other which comprises of 5 buildings commonly known as “Karnani Mansion”.
- 4.** Karnani Mansion has been declared as a Grade –II, Heritage Building by the Kolkata Municipal Corporation on 25th February, 2009. Karnani Mansion is fully occupied by tenants of the plaintiff and several illegal occupants except about 400 sq.ft of area which is the office space of the plaintiff. There are total 175 tenants under the plaintiff and several occupiers aggregating to more than 300.
- 5.** The plaintiff being the owner of the Karnani Mansion has been issuing car parking stickers to the tenants in order to regulate the ingress and egress of motor vehicles into Karnani Mansion as an incident of the

tenancy rights. The plaintiff is also collecting rent/occupational charges from the tenants/occupiers.

6. The defendant no.1 claims to be an association of tenants/ occupiers of the subject premises nos. 25A, 25B, 27A and 27B. The defendant no.2 is the General Secretary and the defendant no.3 is the Joint Secretary of the defendant no.1. The plaintiff never recognized the defendants or permitted the defendants to collect any money from the tenants/ occupiers of the subject premises.

7. The plaintiff has filed a Writ Application before this Court being WP No. 327 of 2001 wherein the plaintiff had challenged the Kolkata Municipal Corporation's decision of re-valuation of the property without giving any opportunity of hearing to the plaintiff. In the impugned notices dated 13th September, 2000 and 2nd February, 2001, the Municipal Corporation increased annual valuation of the subject premises. The writ petition filed by the plaintiff was disposed of by directing the Municipal Corporation to give an opportunity of hearing to the plaintiff before taking any punitive decision against the plaintiff. The Hon'ble Court has also directed the plaintiff to deposit an amount of Rs. 50,00,000/- with the Kolkata Municipal Corporation. The plaintiff being aggrieved with the order has preferred an appeal before the Hon'ble Division Bench being APOT No. 430 of 2001, APO No. 444 of 2006. The Hon'ble Division bench has directed the plaintiff to pay Rs.49,00,000/- within a period of six weeks and in case the plaintiff deposited the said amount, the Municipal Corporation was directed to consider the

representation of the plaintiff. In compliance of the order, the plaintiff has deposited an amount of Rs.49,00,000/-. Pursuant to the order hearing was given to the plaintiff and reassessment of the subject premises was done and the plaintiff has paid all corporation dues till 2007.

8. In the meantime, the defendant no.1 has filed a writ petition some times in the year 2002 against the Kolkata Municipal Corporation being WP No. 1619 of 2002 challenging the Notice dated 27th July, 2002, issued under Section 275 of the Kolkata Municipal Corporation Act, 1980 for disconnection of water supply for nonpayment of Municipal Rates and taxes of the subject premises. In an appeal arising out of the writ petition, the Hon'ble Division Bench by an order dated 27th August, 2002, directed the defendant no.2 to collect rent which is due and payable from each of its members, whether tenants /occupiers and shall pay such amount so collected by way of Pay Order to the Kolkata Municipal Corporation and also directed the defendant no.2 to maintain records in respect of showing amount of rent/charges collected from the different tenants and/or occupiers and to furnish a copy of the same before this Court. By an order dated 4th July, 2011 the Hon'ble Division Bench has disposed of the appeal preferred in connection with WP No. 1619 of 2002 by adopting the order dated 7th September, 2006.

- 9.** The plaintiff paid the entirety of the outstanding dues to the Kolkata Municipal Corporation and the Kolkata Municipal Corporation issued No Outstanding Certificate with respect to the subject premises.
- 10.** The plaintiff came to know about two Circulars dated 24th December, 2015 issued by the defendant no.2 and Circular dated 31st December, 2015 issued by the defendant no.3. Circular dated 24th December, 2015 was issued with regard to collection of payment of rent/maintenance/parking/cleaning from all concerned and Circular dated 31st December, 2015 was issued to collect Parking Maintenance @600/- per month for six months i.e. from January, 2016 to June, 2016 and also to issue Parking Sticker by the defendant no.1.
- 11.** Mr. Sabyasachi Choudhury, Learned Advocate representing the plaintiff submits that the circulars dated 24th December, 2015 and 31st December, 2015 are illegal and void as the said circulars purport to misinterpret the order dated 27th August, 2002. He submits that the order dated 27th August, 2002 does not in any manner grant any right to the defendants to collect any maintenance or parking or cleaning or parking maintenance fees or charges from any of the tenants/occupiers of Karnani Mansion nor does the same give the defendants any right to issue parking stickers.
- 12.** He submits that the order dated 27th August 2002 has lost its force in view of the disposal of the appeal by an order dated 4th July, 2011. He submits that the plaintiff has paid all the outstanding dues to the

Municipal Corporation from 2008 onwards and the Corporation has issued No Outstanding Dues Certificate to the plaintiff and there is no question of any further amount being collected by the defendant in 2015 pursuant to the order dated 27th August, 2002.

- 13.** Mr. Choudhury submitted that the defendants have committed fraud on the plaintiff and the tenants and occupiers of the Karnani Mansion by relying upon the order dated 27th August, 2002 and by suppressing the actual state of affairs from the plaintiff and the tenants and occupiers in respect of any right to collect rent and /or occupation charges. He submits that the defendants have acted dishonestly and usurped money rightfully belonging to the plaintiff by misrepresenting the contents of the order dated 27th August, 2002. He submits that the defendants have used the order of this Court as an instrumental and have deliberately not disclosed the subsequent order of 4th July, 2011. He submits that the defendants have mislead the plaintiff as well as the tenants and occupiers for collection of rent or occupational charges.
- 14.** Mr. Choudhury submitted that the defendants are under the obligation to disclose and give the particulars of all such accounts including particulars of all transactions in such bank accounts. He submits that the defendant no.2 under the obligation to furnish the accounts of all the rents and occupational charges collected since September, 2002.

15. Mr. Choudhury submitted that defendants are acting in breach of the obligations imposed upon the defendants by an order dated 27th August, 2002.
16. The plaintiff in order to prove the case has examined one witness namely Rishi Karnani, being one of the Director of the plaintiff and exhibited all together 9 (nine) documents being **“Exhibit A to Exhibit I”**.
17. To prove that the plaintiff is the owner of the subject properties, the plaintiff has exhibited the Deed of Indenture dated 5th November, 1966 as Exhibit-A.
18. The impugned Circulars dated 24th December, 2015 and 31st December, 2015 are marked as Exhibit-B collectively.
19. Copy of the order passed in appeal in connection with W.P. No. 1619 of 2002 dated 27th August, 2002 is marked as Exhibit-C.
20. Copy of the receipt showing the payment of Rs.49,00,000/-made by the plaintiff to the Kolkata Municipal Corporation in terms of the order passed by this Court in an appeal dated 7th December, 2006 and is marked as Exhibit-D.
21. Original copy of No Outstanding Certificate (NOC) issued by the Kolkata Municipal Corporation with respect of premises no. 25A, 25B, 27A and 27B, Park Street are marked as Exhibit-E and F Collectively.

22. Copy of the order passed by the Appellate Court in an appeal being APO No. 428 of 2002 in W.P. No. 1619 dated 4th July 2011 is marked as Exhibit-G.
23. Car Parking Sticker issued by the plaintiff to the tenants of the subject premises is marked as Exhibit-H.
24. Copy of the graded list of Heritage buildings issued by the Kolkata Municipal Corporation dated 25th February, 2009 wherein the Karnani Mansion is also appearing is marked as Exhibit-I and the portion wherein the numbers of the subject properties are mentioned is marked as Exhibit-I/1.
25. The plaintiff has proved that the plaintiff is the owner of the subject property through Exhibit-A. In an appeal being APOT No. 582 of 2002 and connected appeals along with connected applications the Hon'ble Division Bench of this Court by an order dated 27th August, 2002 has passed the following order:

“Since we are not in a position today to decide in what manner such order should be passed and it may be necessary for us to hear the parties further, we direct that the Secretary of the writ-petitioner-association shall collect the rent which is due and payable from each of its members, whether tenant and/or occupier and shall pay such amount so collected by way of Pay Order to the Kolkata Municipal Corporation.

For the aforesaid purpose, payment as aforesaid may be made by the said Secretary on the next adjourned date in Court by a Pay Order. The Secretary of the said Association shall also

maintain records in respect thereof showing amount of rent and/or charges collected from the different tenants and/or occupiers and furnish a copy of the same before the Court on the next adjourned date.”

- 26.** In the subject premises there are tenants as well as occupiers, who all are in possession of the property and there was a dispute with regard to payment of taxes and the Kolkata Municipal Corporation claimed Rs. 2.28 crores. The Plaintiff has challenged the notice issued by the Kolkata Municipal Corporation in a Writ Proceeding and the matter went up to the appeal. The order passed by the Hon’ble Division bench in APO No. 444 of 2006 with W.P. No. 327 of 2001 (***Karnani Properties Ltd. and Anr. -vs- Calcutta Municipal Corporation and Ors.***), dated 7th December, 2006, the Hon’ble Court passed the following order:

“Mr. Samit Talukdar, learned Counsel appearing for the appellants contends before us that during the pendency of this appeal the Corporation has been able to realise a sum of Rs.50 lakhs approximately by way of adjustment of rents paid by the tenants directly to the Corporation. Mr. Talukdar submits that most of tenants in terms of the direction of this Court are regularly paying their rents to the Corporation directly. Hence it is difficult for the appellants to mobilise further resources to comply with the direction of this Court so contained in the order passed by the learned Single Judge. Mr. Talukdar has filed supplementary affidavit before this Court. He has drawn our attention to the break up of the payments made from time to time by and on behalf of the appellants towards payment of the outstanding dues.

Mr. Talukdar lastly contends that this Court should reduce the amount so directed by His Lordship.

The amount of outstanding as claimed by the Corporation in 2001 was about to Rs.2.28 crores. For last five years there was no payment forthcoming from the Landlord being the appellant abovenamed. However, a sum of Rs.50 lakhs approximately have been collected by the Corporation through realization of rents directly from the tenants. It would not be proper for us in this backdrop to reduce the amount so directed by His Lordship. We, however, do not wish to increase the amount as a condition precedent taking into account the hardship suffered by the appellants as highlighted by Mr. Talukdar in his submission as well as in his supplementary affidavit filed before this Court.

The appellants are directed to deposit the balance sum of Rs.49 lakhs so directed by the learned Single Judge within a period of six weeks from date. In case such amount is deposited the direction given by the learned Single Judge with regard to consideration of the representation of the appellants must be complied with by the Municipal authority. The appellants should also be given an opportunity to submit further representation, if they so want on or before the date of hearing so to be given by the Municipal authority.

The Municipal authority is also directed to complete the process of assessment of annual valuation so to be done periodically in accordance with law. In such event, the Municipal authority must give personal hearing to the representative of the appellants as well as the tenants and/or occupants, if they so desire. The Municipal authority is also directed to render necessary assistance to the appellants in this regard including supply of certified copy of the assessment register, if it is so applied by the appellants in accordance with the rules prescribed therefor.

The order of the learned Single Judge is modified accordingly.

APO No.444 of 2006 is disposed of without, however, any order as to costs.”

- 27.** After the order passed by the Appellate Court, the plaintiff has paid the outstanding dues and the Municipal Corporation issued No Outstanding Certificate (NOC) to the plaintiff and the same has been proved through Exhibit E and F collectively.
- 28.** The defendant no.2 has issued Circulars dated 24th December, 2015 and 31st December, 2015, by referring to the order passed by the Hon'ble Division Bench dated 27th August, 2002. After the order passed by the Hon'ble Division Bench dated 27th August, 2002, there were further two more orders of the Hon'ble Division Bench with respect to the same matter dated 7th December, 2006 and 4th July, 2011. Order dated 4th July, 2011 reads as follows:

“The Court :- This matter has been placed in the special list as no step has been taken by the appellant in spite of the order of admission of the appeal.

Ordinarily, this appeal could have been dismissed for non-prosecution. However, we notice that a Division Bench of this Court presided over by the Hon'ble Justice Tapan Mukherjee passed order on 7th September, 2006 on identical facts and circumstances of the case between the same parties.

We, therefore, instead of dismissing the appeal dispose of the same adopting the said order dated 7th September, 2006.

No Order as to costs.”

After the orders dated 7th December, 2006 and 4th July, 2011 passed by the Hon'ble Division Bench, the order dated 27th August, 2002 lost its force.

- 29.** In the appeal being APO No. 444 of 2006 with W.P. No. 327 of 2001, the plaintiff was the appellant and the writ petitioner. In the said appeal, by an order dated 7th December, 2006, the Hon'ble Division Bench directed the plaintiff to deposit the balance sum of Rs. 49 lacs, as per the directions by the Learned Single Judge, within a period of six weeks from date and in case such amount is deposited, as per the direction of the Learned Single Judge, the representation of the plaintiff is to be considered by the Municipal authority. By an order dated 4th July, 2011, the subsequent Hon'ble Division Bench in an appeal preferred by the Kolkata Municipal Corporation and others, the order dated 7th December, 2006 was accepted and the appeal was disposed of.
- 30.** The plaintiff has proved that the plaintiff has paid the amount of Rs.49,00,000/- to the Kolkata Municipal Corporation in terms of the order passed by this Court in an appeal dated 7th December, 2006 and the said receipt is marked as Exhibit-D. The plaintiff has also proved from Exhibit E and F collectively that Kolkata Municipal Corporation issued No Out Standing Certificate (NOC) with respect to premises no. 25A, 25B, 27A and 27B, Park Street.
- 31.** Considering the above facts and circumstances, this Court finds that the plaintiff has paid the dues to the Kolkata Municipal Corporation and the Kolkata Municipal Corporation has issued No Out Standing Certificate (NOC) with respect to the subject premises and the order dated 27th August, 2002 become ineffective due to the subsequent orders dated 7th December, 2006 and 4th July, 2011, thus the Circulars

issued by the defendant nos. 2 and 3 dated 24th December, 2015 and 31st December, 2015 are bad and illegal.

- 32.** By an order dated 18th January, 2016, this Court appointed a Special Officer for the purpose of collecting rent and maintenance charges from the tenants/ occupiers, who are the members of the defendant Association. In terms of the order dated 18th January, 2016, the Special Officer has collected rent from the tenants/occupiers who are the members of the Association.
- 33.** This Court by an order dated 24th April, 2024 directed the Special Officer to file report and in compliance of the order, the Special Officer has submitted report by providing details of the rent received and the expenditure made including his remuneration. In the said report, the Special Officer has also submitted list of the tenants/ occupiers who are defaulted in paying monthly rent. As per report and account submitted by the Special Officer as on 30th April, 2024 an amount of Rs.1,35,120.54/- is lying in the account of the Special Officer.
- 34.** The Special Officer has collected rent / maintenance from the tenants, who are members of the defendant no.1 association/occupiers of the premises on and from 18th January, 2016. By an order dated 27th August, 2002 the Appellate Court directed the Secretary of the defendant no.1 to collect the rent which was due and payable from each of its members, whether tenant and/occupier and shall pay such amount so collected by way of pay orders to the Kolkata Municipal

Corporation. In the said order, it was also directed the Secretary of the defendant no.1 to maintain all records in respect thereof showing amount of rent and charges collected from the different tenants and/ or occupiers and to furnish copy of the same to the Hon'ble Court.

- 35.** The defendants have not filed written statement and no documents have been brought to establish that how much amount has been collected by the defendants from the tenants/ occupiers and no account is also furnished to the Special Officer appointed by this Court, in contrary the plaintiffs have proved that the plaintiffs have deposited the dues to the Kolkata Municipal Corporation.
- 36.** Considering the above, this Court directs the defendant no.2 to furnish details of all account with respect to the rent/ maintenance charges collected from the tenants/ occupier relating to the Premises No. 25A, 25B, 27A and 27B, Park Street, Kolkata-700016 to the plaintiff within 60 days from the date of this Order.
- 37.** In view of the above the Circulars dated 24th December, 2015 and 31st December, 2015 are declared as null and void. The defendants are restrained from interfering with the right title and interest of the plaintiff in the suit premises. The defendants, their men, servants and agents are restrains from collecting any rent or occupation charges from the tenants and occupier of the premises. The defendants are restrained from issuing any parking stickers or interfering with the parking of the vehicles in the suit properties. The defendants,

particularly the defendant no.2 is directed to furnish all the accounts relating to the premises No. 25A, 25B, 27A and 27B, Park Street, Kolkata-700016 to the plaintiff within 60 days from the date of this order. Special Officer is directed to handover all accounts after deducting his remuneration with the details of the tenants/ occupiers of the premises to the plaintiff within 60 days from the date. After handing over the same, the Special Officer is deemed to be discharged.

38. In view of the above, **C.S. No. 8 of 2016** is **disposed of**. Decree be drawn accordingly.

(Krishna Rao, J.)