IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
AN APPEAL FROM JUDGMENT AND ORDER PASSED IN ITS CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

APO 92 of 2022
SAMUEL FITZE AND COMPANY PRIVATE LIMITED AND ANR.
Versus
THE STATE OF WEST BENGAL AND ORS.

APO 93 of 2022
IA GA 2 OF 2021
THE STATE OF WEST BENGAL AND ORS.
Versus
SAMUEL FITZE AND COMPANY PRIVATE LIMITED AND ANR.

Present :
The Hon'ble Justice Debangsu Basak
-And-
The Hon'ble Justice Md. Shabbar Rashidi

For the State : *Md. T.M. Siddiqui, AGP.*
Mr. S.Adak, Adv.

For the writ petitioner : *Mr. Ashoke Kumar Banerjee, Sr. Adv.*
Mr. Joydeep Kar, Sr. Adv.
Mr.Manwendra Singh Yadav, Adv.
Mrs. Saswati Chatterjee, Adv.
Mrs. Satabdi Naskar (Kundu), Adv.

HEARD ON : 20.06.2024 & 13.08.2024
DELIVERED ON : 13.08.2024

DEBANGSU BASAK, J.:-

1. These two appeals are directed against the judgment and order dated February 9, 2021 passed in WPO No. 7 of 2021.

2. APO No. 92 of 2022 is at the behest of the writ petitioner while APO No. 93 of 2022 is at the behest of the State of West Bengal and its functionaries.

3. Learned advocate appearing for the State submits that, the private respondent is the tenant under Murshidabad Estate. Writ petitioner is liable to pay rent enhanced from time to time to the Murshidabad Estate. Writ petitioner was not paying such rent for a considerable period of time. Consequently, Murshidabad Estate issued several notices both for payment of rent and for enhancement. Thereafter one of such notices has been assailed in the High Court. High Court disposed of such writ petition by directing that enhancement can be undertaken only after framing of rules. He points out that the rules were framed. Consequently, the Murshidabad Estate is entitled to proceed for fixation of the enhanced rent.

4. Learned advocate appearing for the State submits that exercise of fixation of enhanced rent and demand for payment in respect thereof were undertaken from time to time. One of such efforts was the impugned notice dated December 8, 2020. He submits that, the notice dated December 8, 2020 is essentially a show cause notice (SCN). No right of the writ petitioner was decided by such notice. By such notice the writ petitioner was called upon to show cause as to why enhanced rate of rent would not be charged for the period specified. The impugned notice also stated that in the event of default then, steps under the provisions of Murshidabad Estate (Management of Properties) and Miscellaneous Provisions Act, 1980 would be taken. He submits that without answering to the show cause notice, the writ petitioner filed the present writ petition. By the impugned order, the entire show cause notice was set aside after holding it to be mala fide and arbitrary. He submits that, there is no case made out in the writ petition to arrive at such finding.

5. Relying upon **(2004) 3 Supreme Court Cases 440 (Special Director and Another vs. Mohd. Ghulam Ghouse and Another)** learned advocate appearing for the State submits that, the Writ Court should not interfere with the impugned show cause notice since, the person who issued the show cause notice cannot be said to be acting beyond jurisdiction or being without jurisdiction.

6. Learned advocate appearing for the State submits that, the learned Single Judge also proceeded on the basis of limitation. He submits that, although the issue of limitation was not raised in the writ petition, learned Single Judge none-the-less considered the claim made by the State to be barred by laws of limitation. He relies upon **(2003) 8 Supreme Court Cases 40 (V.K. Majotra vs. Union of India and Ors.)** and submits that a point which was not raised in the writ petition should not be considered as the opposing party is taken by surprise.

7. On the issue of limitation, the learned advocate appearing for the State submits that, such issue is a mixed question of fact and law. In any event, Article 52 of the Limitation Act, 1963 is not attracted. In support of such contention, he relies upon **1980 MPLJ 429 (L.S. Nair vs. Hindustan Steel Ltd., Bhilai & Ors.)**.

8. Learned advocate appearing for the State submits that so far as the order of attachment issued by the Income Tax authorities are concerned, his client filed writ petition challenging the order of attachment. However, such writ petition was dismissed for default. State is taking steps to restore such writ petition or taking suitable measure with regard to the subsisting order of attachment issued by the Income Tax authorities.

9. Learned senior advocate appearing for the writ petitioner submits that his client applied under the Right to Information Act, with regard to the order of attachment by the Income Tax authorities. He draws the attention of the Court to the response given by the Income Tax authorities on such issue. He refers to the letter dated July 5, 2024 issued to the Tax Recovery Officer by his client and the response thereto given by the Income Tax authorities dated July 9, 2024. He submits that, Income Tax authorities stated that the Murshidabad Estate is a defaulter in terms of Section 220 of the Income Tax Act, 1961 in respect of outstanding demand of Rs.94.50 lakhs excluding interest under Section 220(2) thereof for the Assessment Years 1967-68 to 1983-84. He points out that the total recoverable amount was Rs.4.41 crores with interest charged upto January, 2024 as stated by the Income Tax authorities.

10. Learned senior advocate appearing for the writ petitioner submits that, the entirety of the impugned notice dated December 8, 2020 was not under challenge in the writ petition. He contends that, the challenge was limited to whether or not the Estate Manager of the Murshidabad Estate can levy a claim in excess of the three years from the date of the impugned notice. He submits that, the Estate Officer and proceedings under the Murshidabad Estate (Management of Property) and Miscellaneous Provisions Act, 1980 were governed by the provisions of the Limitation Act. In support of such contention, he relies upon **(1976) 3**

SCC 407 (New Delhi Municipal Committee vs. Kalu Ram & Anr.); 2023 SCC Online Del 2327 (Bharat Petroleum Corporation Ltd. vs. Airport Authority of India & Anr.).

11. Learned senior advocate appearing for the writ petitioner submits that the words “not payable” necessarily include the issue as to the limitation as the recoverable amount is the payable amount. Therefore, he submits that no interference is called for with the impugned order.

12. The writ petitioner is a tenant under the Murshidabad Estate. Tenancy of the private respondent under the Murshidabad Estate is governed by the provisions of Murshidabad Estate (Management of Property) and Miscellaneous Provisions Act, 1980.

13. In response to a query raised by the writ petitioner under the Right to Information Act, with regard to the recovery proceedings against the Murshidabad Estate initiated by the Income Tax department resulted in the writing dated July 9, 2024 issued by the Income Tax authorities. There the Income Tax authorities noted that the principal demand was a sum of Rs.94.50 lakh excluding interest for the Assessment Year 1967-68 to 1983-84 as against Murshidabad Estate. The total recoverable amount of Murshidabad Estate amounted to Rs.4.41 crores with interested charged upto January, 2024.

14. These appeals require us to address on at least two aspects with regard to the tenancy. One aspect is the attachment of the rent payable by the writ petitioner to Murshidabad Estate. The other aspect is the rate at which the writ petitioner is liable to pay rent to Murshidabad Estate.

15. Rent payable by the writ petitioner is subject to periodical revision under the Act of 1980. The Estate Manager of Murshidabad Estate is empowered to undertake such exercise. In such context, the Estate Manager of Murshidabad Estate from time to time issued different notices to the private respondent.

16. None of the notices so far issued by the Estate Manager resulted in a decision of enhancement of rent. The issue of enhancement of rent, therefore, was open till the time the Estate Manager issued the impugned notice dated December 8, 2020.

17. By the notice dated December 8, 2020 the Estate Manager of Murshidabad Estate called upon the writ petitioner to show cause with regard to the proposed enhancement of rent for the period specified therein as also at the rates specified. This period for which the enhancement was proposed was enumerated in the notice dated December 8, 2020 which was impugned in the writ petition.

18. We note the submission of the learned senior advocate appearing for the writ petitioner that, the entirety of the impugned show cause notice was not challenged. Challenge was limited to the period of enhancement which was sought to be undertaken by the impugned notice.

19. Therefore, since, the challenge to the show cause notice impugned in the writ petition being of a limited nature, there was no ground for the learned Single Judge to quash the notice dated December 8, 2020 in its entirety.

20. In any event, the notice dated December 8, 2020 in its last paragraph calls upon the writ petitioner to show cause as to the proposed enhancement. The writ petitioner seeks to read such notice as a notice of demand. We read such notice as a show cause notice since, such notice proposes the enhancement, calls upon the writ petitioner to show cause as to why the enhancement proposed should not be applied and, in default, the writ petitioner be intimated with invocation of the relevant provisions of the Act of 1980.

21. With regard to the exercise of jurisdiction in a writ petition assailing a show cause notice the Hon'ble Supreme Court in **Md. Ghulam Ghouse & Anr. (*supra*)** observed as follows :-

> *"5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority using the very notice initially, before the aggrieved could approach the Court. Further, when the Court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is*

> *not accorded to the writ petitioner even at the threshold by the interim protection granted."*

22. In the facts of the present case the Estate Manager of Murshidabad Estate who issued the notice dated December 8, 2020 impugned in the writ petition cannot be said to be exercising powers in excess or beyond jurisdiction vested upon him under the provision of the Act of 1980. Such is not the claim of the private respondent/writ petitioner also.

23. On the issue of limitation, parties before us cited **V.K. Majotra (*supra*)**, **L.S. Nair (supra)**, **Kalu Ram & Anr. (*supra*)** and **Bharat Petroleum Corporation Ltd. & Anr. (*supra*)**.

24. In the case of **V.K. Majotra (*supra*)**, the Hon'ble Supreme Court is of the view that a point which is not pleaded in the writ petition should not be allowed to be raised. Limitation, in the manner the learned Judge dealt with, in the impugned order with regard to the notice dated December 8, 2020, was not pleaded in the writ petition.

25. **L.S. Nair (*supra*)** was rendered by the Division Bench of Madhya Pradesh High Court where Their Lordships held provisions of Limitation Act were attracted to an Estate Officer exercising jurisdiction under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. However, Hon'ble Supreme Court in **Kalu Ram & Anr. (*supra*)** is of the view that Limitation Act applies in all its rigors to a proceeding initiated under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1950. The Delhi High Court in **Bharat**

Petroleum Corporation Ltd. (supra) follows the ratio laid down in **Kalu Ram & Anr. (*supra*)**.

26. Limitation is a mixed question of fact and law. It is best decided after affording the parties an opportunity to lead evidence on such issue.

27. The issue of limitation is yet to be decided by the Estate Manager, Murshidabad Estate. Such an issue can be raised by the writ petitioner, if it chooses to file a response to the notice dated December 8, 2020 which was impugned in the writ petition.

28. In view of the discussion above, we set aside the impugned order dated February 9, 2021. We permit the writ petitioner one opportunity to file a response to the notice dated December 8, 2020. Such response be filed within a period of fortnight from date. The Estate Manager will consider the notice dated December 8, 2020 and the response, if any, filed by the writ petitioner in accordance with law. The Estate Manager will, no doubt, decide on the issue raised by the writ petitioner, including the point of limitation in accordance with law.

29. Both the appeals being APO/92/2022 and APO/93/2022 along with all connected applications are disposed of accordingly without any order as to costs.

(DEBANGSU BASAK, J.)

30. I agree.

(MD. SHABBAR RASHIDI, J.)

TR/As.