

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 1487 of 2018

Fabworth Promoters Private Limited

Vs.

The Kolkata Municipal Corporation & Ors.

For the petitioner

:Mr. Jishnu Saha, Sr. Adv.
Mr. Meghajit Mukherjee, Adv.
Ms. Brinda Sengupta, Adv.
Mr. Ishaan Saha, Adv.
Mr. Tanish Ganeriwala, Adv.
Ms. Srijeeta Gupta, Adv.
Ms. Sonia Das, Adv.

For the K.M.C

:Mr. Malay Kr. Ghosh, Sr, Adv.
Mr. Swapan Kr. Debnath, Adv.

For the K.M.D.A

:Mr. Satyajit Talukder, Adv.
Mr. Arindam Chatterjee, Adv.

Last Heard On

:19.08.2025,

Judgement On

:25.09.2025

Bibhas Ranjan De, J. :**Preface:-**

1. The instant revision application has been preferred before this Court by the aggrieved petitioner, with a fervent prayer to set aside the impugned order dated 08.11.2017 whereby the Ld. 4th Civil Judge, (Senior Division) at Alipore in the Title suit no. 2611 of 2016, had erroneously and with respect, incorrectly declined to accede to the just and legitimate prayer made in the application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as CPC)

Background facts:-

2. The plaintiff/opposite party no. 1 had filed a suit for declaration of title and consequential reliefs including a prayer for declaration that the lease deed dated 28.09.2007 is void *ab initio* and further sought for recovery of possession and permanent injunction against the defendant no. 1/petitioner herein qua the suit property mentioned in the schedule to the plaint.
3. The defendant no. 1/petitioner preferred an application under Order VII Rule 11 of CPC contending *inter alia* that the plaint

fails to disclose the cause of action delineating the fact of acquiring title over the suit property by the plaintiff/opposite party no. 1 and also that the suit is barred by limitation:-

- “1. On 1870 the Secretary of state of India conveyed the land commonly known as Dhapa Dumping Ground which is now popularly known as "Dhapa Square Mile" to the Justice of peace for conservancy of the city of Calcutta at the material point of time and thereafter the said land including the suit land were vested to the then Calcutta Corporation by operation of law i.e. Act IV of 1876.*
- 2. Thereafter on or about 1880 the Corporation lease out the land to Bhabanath Sen for doing work of unloading of refuge wagons.*
 - 3. That on the Eastern Metropolitan By Pass, there exists low lying area popularly known as DHAPA MATH consisting of Mouzas as Dhapa Boinchtala, Purba Topsia, Dhapa Manpur, Nimok Poltan, Paschim Chowbhaga Dhaleda, Tangra and adjoining area a small part of which is mainly meant for dumping and spreading Garbage of the city of Calcutta. The said area is the longest vacant land in the city and subject matter of the present suit and the land originally belongs to the Corporation of Calcutta at present known as Kolkata Municipal Corporation.*
 - 4. The Calcutta Municipal Corporation (previously known as Corporation of Calcutta) being the principal authority in civic affairs in respect of the city of Calcutta is required to perform various functions. One of such functions is the maintenance of proper conservancy system in Calcutta City which includes effective discharge of sewerage and dumping of garbage.*
 - 5. For better and effective discharge of sewerage and dumping of garbage, a plot of land outside limits of the City of Calcutta was necessary. Under Act No.VI of 1857 the Land Acquisition Act then in force, the Secretary of State of India in Council acquired 2005 Bighas 8 Cottahs 4 Chittaks of land near area now known as Salt Lake and by an Indenture of*

Conveyance dated 5th December, 1870 made over the said plot of land to the Justice of peace for the Town of Calcutta. The said plot of land subsequently vested in the Corporation of Calcutta by the Operation of Act No.IV of 1875 which superseded the Act V of VI of 1863.

6. *Another small parcel of adjacent land was acquired under the Land Acquisition Act.*
7. *Bhabanath Sen was engaged by the Corporation of Calcutta to perform the work of unloading refuses of city of Calcutta within a portion of the said plot of land which was becoming the dumping ground. A lease was granted in favour of Bhabanath Sen for that purpose on 23th January, 1880 for a term of 20 years on a rental of Rs.3,400/- per annum by the then Calcutta Corporation.*
8. *On expiry of the extended terms of lease which expired on 31st December, 1930 the Calcutta Corporation took up the work of unloading of refuses etc. in its own hand. The heirs of Bhabanath Sen was asked to give up the possession of the property but they did not. In 1931 a notice was served upon the heirs of Bhabanath Sen to deliver up possession and on default, a suit for recovery of possession was filed by the Calcutta Corporation on 10th April, 1933. The said suit was numbered as Title Suit No.70 of 1933 and was filed in the First Court of Sub-ordinate Judge at Alipore. In the said suit, possession of the plot of land measuring 1786 bighas of land, which was known as Dhapa Square Mile, was claimed.*
9. *The said suit was contested. Upon hearing, the Learned Judge delivered a Judgment and passed a decree for possession on 17th June, 1935. Under the decree the Calcutta Corporation become entitled to possession of land by evicting defendants.*
10. *By and under the Judgment, the Learned Judge held the lessee as a tenure-holder and not rayats. It was also held that the lessee was a tenure-holder lessee for the terms of years and raiyati interest could not have been acquired.*
11. *The heirs of Bhabanath Sen approached the Calcutta Corporation for negotiation and settlement. It was agreed that a fresh lease would be granted with effect from 1936 for a period of 30 years. Execution of the lease was delayed. Ultimately in 1962 the Deed of Lease was executed by the Calcutta Corporation and the same was registered in favour of the heirs of Bhabanath Sen for the period commencing from 1936 and the same expired in 1966.*

12. *From the aforesaid decree of eviction passed in 1935 and also Schedule to Deed of Lease, the areas covered thereby and the particulars of Khatian number and C.S. Dag No. will appear.*
13. *On 12th February, 1954, the West Bengal Estate Acquisition Act, 1953, came into force and by Ordinance No.6 Section 6(1)(h) of the West Bengal Estate Acquisition Act, 1953 was incorporated. The ordinance later on, was replaced by an Act.*
14. *After, the West Bengal Estate Acquisition Act, 1953 came into force on and from 12th February, 1954 notice was served by the said authorities on the Corporation of Calcutta alleging that the said Dhapa Land had vested in the State of West Bengal under the said Act and as such all rents due from and payable by the occupiers of land should be paid to the State of West Bengal in 1939. The said notice was challenged by the 'Sens' as well as the Corporation of Calcutta respectively by filing two separate writ applications and on the said applications Civil Rule Nos. 1207 and 1132(W) of 1959 an interim order of injunction was issued restraining the defendants and its men from giving any effect to the said notice was also passed.*
15. *During the pendency of the said proceeding the Govt. of West Bengal promulgated the Ordinance No.VI of 1960 amending Section 6(i)(h) of the said Act, 1953 by incorporation of proviso thereto. Both the said writ applications were finally disposed of by a Judgment. In view of the said Ordinance it was recorded therein that the said land vested in the Govt. the Corporation of Calcutta are/were entitled to retain the said land and in fact retained the same in accordance with the said Act. It is, therefore, clear that the Corporation was in fact the owner of the land and on coming into force of the said Act, 1953 the Corporation retained the said land which fact was duly recorded in the said Judgment while disposing of the writ application.*
16. *The Corporation of Calcutta now known as the Calcutta Municipal Corporation is a local authority.*
17. *On 2nd January, 1970 the Calcutta Corporation passed resolution authorizing the Commissioner to take immediate possession of the said Dhapa Square Mile Land. Pursuant to*

the said resolution the Commissioner issued a notice on the same day, which was hung up at Dhapa Kutchary as well as the residence of the heirs of the said Bhabanath Sen, the aforesaid lessees.

18. *On 3rd January, 1970 heirs of Bhabanath Sen, the aforesaid lessee moved an application under Article 226 of the Constitution of India for restraining the Corporation of Calcutta from taking aforesaid land known as "Dhapa Square Mile" and interim order was obtained ex parte.*
19. *On 3rd January, 1970 the Corporation of Calcutta took the possession of the said land excluding Kutchary House without knowledge of the said order of injunction.*
20. *Upon an application being filed by the Calcutta Corporation on 9th January, 1970 interim order was varied to the extent that injunction order would not prevent from dumping garbage in the area.*
21. *The writ application challenging the resolution dated 2nd January, 1970 was heard by the Learned Single Bench and was allowed to 21st September, 1970 and the resolution dated 2nd January, 1970 was quashed.*
22. *From the said judgment and order dated 21st September 1970 an appeal was preferred by the Calcutta Corporation to the Hon'ble Division Bench, by a Judgment and order dated March 16th, 1973 the said appeal was allowed and the order of the Learned Single Bench was set aside and writ application was dismissed. The Hon'ble Division Bench held that the Calcutta Corporation has right to recover the land being Dhapa Square Mile including the adjoining areas was in action of the Corporation to recover the possession of the said land was supported by legislative sanction in terms of the provision to Section 6(1)(h) of the West Bengal Estate Acquisition Act, 1953.*
23. *From the said Judgment and Order dated 16th March, 1973 passed by the said Hon'ble Division Bench being F.M.A. No.23 of 1971 the heirs of said Bhabanath Sen, the aforesaid lessee, preferred an Appeal being Civil Appeal No.791 of 1975 to the Hon'ble Supreme Court. The said appeal was disposed of on 16th April, 1985 by the Hon'ble Supreme Court by a consent decree in terms of which the dispute as to the amount of compensation payable to the*

appellants of the said Appeal by the Calcutta Municipal Corporation was referred to Justice A.C. Gupta, a retired judge of the Hon'ble Supreme Court for arbitration, Justice Gupta made an Award pursuant to the said reference on 7th November, 1985.

24. Pursuant to the said Award the heirs of Bhabanath Sen, the aforesaid lessee, duly received the compensation money from the Calcutta Municipal Corporation.

25. From the facts stated above it is clear and apparent that the said lands known as "Dhapa Square Mile" belonged and/or still belongs to Calcutta Municipal Corporation and no one even the heirs of said Bhabanath Sen has any subsisting right, title and interest in respect of the said land after the Award made on 7th November, 1985 as aforesaid. It is further evident that in view of the absolute right, title and interest of the Calcutta Municipal Corporation in respect of the said lands the corporation can deal with and dispose of the same in any manner it thinks fit for the interest of the people in general.

26. After taking possession of Dhapa Square Mile, the Calcutta Corporation continued to use substantial part of the Dhapa Square Mile as dumping ground. A major corridor namely E.M. Bye Pass was constructed by Calcutta Metropolitan Development Authority through Dhapa Square Mile and jurisdiction the Calcutta Municipal Corporataion (for short C.M.C.) was extended upto the Dhapa Square Mile.

27. In the year 1993 a portion adjoining land Dhapa Square Mile was allotted for construction of Science City in 1994 and it was decided to allocate a portion of DHAPA Square Mile on the west of E.M. Bye-pass for construction of Hotel Project for Development and infrastructure of the City of Calcutta and other portions adjacent thereto were decided to be allotted to for construction of new building of the Calcutta stock Exchange and establishment of Craft Village. Advertise-ment were issued in all India Newspaper in the year 1994 and ultimately the tenders were submitted by Taj Group of Hotel and Welcome Group of Hotel. The Calcutta Municipal Corporation accepted the offers from welcome Group of Hotel being the highest bidder, Taj Group of Hotel filed a writ petition challenging the acceptance of the offer of welcome group of Hotel and the Writ Petition was heard by the Hon'ble Justice Satyabrata Sinha and the same was ultimately

dismissed by the Judgment and order dated 13th April, 1995 and an appeal was preferred against the said Judgment by Taj Group of Hotel and during the pendency of the appeal Taj Group of Hotel approached for settlement and wanted another plot of land in the neighbouring place for setting up another five star hotel at Calcutta.

28. The Calcutta Municipal Corporation had no objection to the ideal for setting another Five Star Hotel which will promote the infrastructure of City of Calcutta. Welcome Group of Hotel did not raise any objection in the Appeal. The terms of Settlement were filed and the allotment of land to the Welcome Group of Hotel was upheld and sustained. Taj Group of Hotel was allotted to another plot of land on the Western side of E.M. Bye pass curbed out of a portion of another portion of Dhapa Square Mile.

29. In the year 1996 several Writ Petition were initiated by several persons No. Being 19072(W) of 1996, 18905(W) of 1996, 11449(W) of 1996, 11459(W) of 1996 to 11468(W) of 1996 against the "suo-moto" proceeding of the Government bearing No.1 of 1996 under Section 47 of the West Bengal State Acquisition Act read with Section 6(i)(h) of the said Act and the said authority passed an order on 7th August, 1996 to the effect, inter alia that the entry and interest of the lessees in respect of the concerned Khatians stand cancelled from the concerned Khatian and vis-à-vis any sublease found to have been created and/or any subsequent transfer effecting the land recorded in these Khatians also stand cancelled and/or eliminated by operation of the provision of Section 47 of the West Bengal Estates Acquisition Act with effect from the date of expiry of the lease. Accordingly, it was directed that the Khatian No.161 (Sabek 184) in the name of the Calcutta Municipal Corporation under the superior landlord Government of West Bengal.

30. The record of right have already been corrected by application of law and also of the proceeding in respect of Khatians opened out from Khatian No.184 were corrected namely khatian nos. 135 to 197, 197/1, 198, to 236, 238 to 296, 296/1, 277 to 332, 332/1, 333 to 370, 372 to 409, 409/1, 410 to 553, 553/1, 554 to 619, 622 to 662, 664 to 690, 698 to 702, 704, 706 to 728, 730732, 734, 736 to 741, 745 to 897, 899 to 910, 919 to 921 and all the lands covered by these khatians were directed to be merged with Khatian No.183 i.e. the Khatian of the Calcutta Municipal Corporation.

31. All the writ applications as stated hereinabove were disposed of by the Hon'ble Justice S.B. Sinha on 17th

February, 1997 with certain direction as mentioned therein. It was observed inter alia that the decision of the Hon'ble Court as passed in the said case (Corporation of Calcutta & ors. Vs Dharendra Nath Sen & ors.) should be binding upon the petitioners of the said case.

32. One Sri Bijoy Gupta & ors. also filed a writ application in this Hon'ble Court in the year 1994. The said Writ application was disposed of by the Judgment dated 17th February, 1997. Other appeals were preferred against the said Judgment and all the appeals as preferred come up for hearing before the Hon'ble Mr. Justice Bhagabati Prosad Banerjee and the Hon'ble Mr. Justice Vidyanand (as Their Lordships then were). Their Lordships upon hearing were pleased to dismiss the Appeals by Judgment dated 3.7.1997. Subsequently the said Bijoy Gupta & ors. filed a Special Leave petition before the Hon'ble Supreme Court but the said petition was ultimately withdrawn. Accordingly the Special Leave Petition was dismissed as withdrawn.
33. Since the corporation is the owner of the land in question the corporation has every right and authority to allot the land situated in the Dhapa Square Mile for the interest of the public and from time to time corporation has allotted some plots of land to different Agencies like I.T.C., I.C.V.T. Stock, D.L.F., L.I.C. etc. for the development of the said area.
34. The land in question measuring about 5.61 acre in Mouza Boinchitala, J.L. No.4, Police Station Tiljala, District South 24 Parganas comprised in Khatian No.160(Sabek 183) in which lands in subordinate Khatian Nos. 135 to 197, 197/1, 198, to 236, 238 to 296, 296/1, 277 to 332, 332/1, 333 to 370, 372 to 409, 409/1, 410 to 553, 553/1, 554 to 619, 622 to 662, 664 to 690, 698 to 702, 704, 706 to 728, 730/732, 734, 736 to 741, 745 to 897, 899 to 910, 919 to 921 were merged. After obtaining prior recommendation of Mayor in Council and approved of the same in the Municipal Corporation meeting held on several dates and finally on 21.2.2002.
35. The defendant no. 1 has no right lease out the said land. It is pertaining to note in this connection corporation authorities duly circulated the Public Notice in the said locality on different times in the order to prevent the intending lessees for abandon caution requesting the public to purchase or lease the said properties the area in question.
36. The defendants claimed as owners of suit land filed Writ Petition being No.4928(W) of 2015 () for reliefs therein –
a) For quash and/or set aside the purported order passed by the Assessor-Collector of K.M.C.

- b) For quash and/or set aside all bills raised or demand on the basis of Assessment of Annual valuation including steps & action taken on the basis thereof etc.
- c) An order of temporary injunction restraining the K.M.C. in any way claiming any property tax in respect of the said property by the Order dated 134.1.15 and other reliefs.
37. It is reiterated that the defendant no.3 from whom they have acquired as lessee the said 5.61 acres of land have no right title and interest in the land in question and they did not acquire any right whatsoever in any manner by the alleged Deed of Lease.
38. That on 5.1.1962 the Commissioner, C.M.C. wrote to the settlement officer, 24 Parganas, requesting to the Settlement Officer, South 24 Parganas to prepare the record of Right in respect of the above mentioned lands involving five hundred Khatians in the name of C.M.C. in the light of the amendment of Section 6(1)(h) read with Section 45A of the W.B.E.A. Act, 1953.
39. That on 7th August, 1996) a proceeding under Section 47 read with Section 6(1)(h) of the W.B.E.A. Act, 1953 was initiated by the Special Revenue Officer, Grade 11, attached to Block Land and Land Reforms Officer. The said Officer by its order dated 7.8.1996 declared and confirmed the ownership of the Calcutta Municipal Corporation in respect of the land in question. The said officer, thus applied power in exercise of his jurisdiction and finally published record of Right by opening a new and separate Khatian in the name of the Calcutta Municipal Corporation.
40. That as already stated on 3.7.1997 the Hon'ble Justice Bhagabati Prasad Banerjee and Hon'ble Justice Vidyanand heard appeal being No.1215/97 with C.O. No.12217 (W) of 1996 with C.O. No.13219(W) of 1996 with C.O. No.1335(W) of 1994 with M.A.T. 473/97 with MAT 773/97 with MAT 776/97 with MAT 770/97 with MAT 775/97 with MAT 780/97 with MAT 781/97 arising out of the Judgment dated 17.2.1992 so passed in C.O. No.11459(W) of 1996 and C.O. No.11463(W) of 1996 to C.O. No. 11468(W) of 1996.
41. That the defendants claimed right in respect of land which falls within Mouza Boinchtola particularly in the part of the said Mouza which is owned and under the occupation of the Calcutta Municipal Corporation under the Superior Landlord, State of West Bengal. It has been established in appropriate legal forum not only in this Hon'ble Court but also in the Hon'ble Supreme Court that the lands in the Mouza in question belong to the Calcutta Municipal Corporation. So, the question of acquisition of any right by defendants from their

predecessors in respect of any portion of these lands cannot and does not arise at all and the defendants are not entitled to any such claim. Defendant no.3 had no right and were not at all competent to execute the deeds. There is no material in the said application as to how such persons derived right, title in respect of the said land. The transactions so entered into by and between the defendant and the so-called K.M.D.A. the Defendant No.3 appear to be fishy and they in collusion and connivance with each other got the lease deed in suppression of the material facts. The defendants on the basis of such purported documents did not acquire any right, title or interest in respect of the said land.

42. *From facts stated above in preceding paragraphs it is crystal clear that the Kolkata Municipal Corporation is the absolute owner of the properties mentioned herein before in absolute right to the exclusion of all others. Nobody has any right, title and interest in the said properties.*
43. *The defendant no.4 filed Writ petition being W.P. No.4928(W) of 2015 in the Hon'ble High Court for illegal and arbitrary assessment of Municipal Premises No.4A, J.B.S. Halder Avenue, Kolkata at an annual valuation of 13,27,71,870/- from 3rd Quarter 2007-2008.*
44. *In the said Writ Petition No. WP No.4928(W) of 2015 the defendant no.1 state that at all material times the Kolkata Metropolitan Authority in short (K.M.D.A.) was and is still the absolute owner of a plot of land situated at the junction of Dhapa Road and Eastern Metropolitan by Pass measuring 5.61 acres within Ward No.58 of the Kolkata Municipal Corporation. The said Premises has been presently assessed as Premises No.45A, J.B.L. Halder Road, Kolkata.*
45. *On 20th February, 2006 K.M.D.A. published notice in the English daily "The Times of India" inter alia, inviting notice for granting a lease of the said premises for the purpose of constructing a 5/7 Star Hotel thereon.*
46. *The said defendant no.3's further case is that they offered a lease premium of Rs. 189,67,41,000/ which turned down to be the highest bid received by KMDA. Accordingly K.M.D.A. accepted such bid. A lease deed dated 28th September, 2007) was executed by and between the KMDA and the defendant no.3 whereby KMDA demised unto Fabworth the said premises on lease 99 years against premium Rs. 1,89,67,43,000/- and annual rent of Rs.1/- per Cottah.*
47. *Though K.M.D.A., the defendant no.3 leased out the property to the defendant no.1 but in the Lease Deed dated 28th September, 2007 there is no mention as to how K.M.D.A. has become owner of the said property in question. Nowhere in*

- the said Deed there is anything recited as to how of ownership was acquired by the defendant no.3 K.M.D.A.*
48. *The defendant no.3, K.M.D.A. by suppressing the material fact in the Lease Deed dated 28th September, 2007 and ignoring the right, title and interest of the plaintiff leased out the land in question and the defendant no.1, without raising any question as to acquisition of title of the property by the defendant no.3 in question took the lease.*
49. *The matter came to the notice of the plaintiff and its authority from the pleading of the Writ Petition NO,WP 4928(W) of 2015 and appeal preferred by the plaintiff in MAT No. 171 of 2016 that the plaintiff is the owner of the property in question. The defendant no.3 K.M.D.A.'s 306/16 claim is not at all based upon any valid title. Even if the defendant no.3 claim any title its such claim is not at all tenable in view of the order passed in Case No.1 of 1996 in the proceeding under Section 47 of West Bengal Estate Acquisition Act, read with Section 6(i)(h) of the said Act passed by A.S.O. & S.R.O. II.*
50. *The plaintiff was led to mutate the name of defendant no.3 as lessor and the name of the defendant no.1 as lessee on misrepresentation and suppression of fact by the said defendants.*
51. *It is pertinent to mention that within the provisions of the Kolkata Municipal Corporation Act, 1980 the municipal authority is not authorised to grant ownership to anybody. Mere entry in the assessment book does not create title and give ownership to anybody.*
52. *The plaintiff was further led to grant sanction of the 16/10 building plan on the basis of such suppression and misrepresentation of fact.*
53. *The plaintiff states and asserts that the plaintiff's title and ownership to the property in question does not affect in any manner whatsoever inasmuch as, the property all along belongs to the plaintiff and the plaintiff never transferred its right, title and interest to anybody at any point of time.*
54. *With regard to the claim of the defendant no.3 K.M.D.A. that it acquired right, title to property in question through L & L.R. Department, Government of West Bengal. The plaintiff states and asserts that as the property belongs to the plaintiff in absolute right as would appear from the facts stated in preceding paragraphs. The defendants claim of interest in the property in question does not sustain at all.*
55. *As the defendant no.3 K.M.D.A. claimed title through the state of West Bengal, State of West Bengal is made proforma defendant herein so that the suit may be heard in its presence.*

56. *The plaintiff submit that the facts and circumstances stated above led to the conclusion that the plaintiff is entitled to declaration of title to the property in question as against the defendants.*
57. *The defendants are illegally possessing the suit property without any title and as such the plaintiff being rightful owner is entitled to a Decree for recovery of possession of the property described in the Schedule hereto.*
58. *The plaintiff is further entitled to a Decree for permanent injunction, restraining the defendant nos.1 and 2 from proceeding with construction on the land in question in any manner whatsoever.*
59. *No part of claim is barred by limitation.*
60. *The cause of action for this suit arose on 6.6.2016 for the first time at Mouza Boinchtala, Police Station Tiljala, District South 24 Parganas, J.L. No.4 within the jurisdiction of the Kolkata Municipal Corporation, being premises no.45A, J.B.S. Halder Road, Kolkata.*
61. *For the purpose of valuation and jurisdiction the plaintiff values the suit at Rs. /- and pays court fees thereon.*

The plaintiff, therefore prays for:-

- a) A Decree for declaration of its title to property fully described in the Schedule below;*
- b) A Decree for declaration that the Lease Deed dated 28th September, 2007, executed by K.M.D.A., the Defendant no.3 in favour of the defendant no.1 is void ab-initio and did not confer any right whatsoever;*
- c) A Decree for recovery of possession upon enacting the defendant no.1 for the properties described in the Schedule below;*
- d) A Decree for permanent injunction, restraining the defendant no.1 from proceeding with any work construction on the property described in the Schedule below;*
- e) Such other relief or reliefs which the plaintiff is entitled to in law and equity;*
- f) For costs of the suit;”*

Argument Advanced:-

4. Learned Senior Counsel, Mr. Jishnu Saha, appearing on behalf of the petitioner has mainly advanced a two fold argument by contending *inter alia* that the plaint fails to disclose cause of

action or the documents on which it sought for reliefs. In this regard, Mr. Saha has submitted that although the plaintiff/opposite party no. 1 claims right, title and interest over the suit property without disclosing any documents or any relevant records to that effect in the said Title Suit, such non-disclosure tantamounts to vitiating of the cause of action. A cumulative reading of the plaint as a whole, would further clarify that no cause of action can be ascertained which entitles the plaintiffs/opposite party no. 1/KMC to avail reliefs as sought for because the plaint should have ideally contained the full particulars of suppression and misrepresentation that had allegedly been employed by the defendants while obtaining sanction plan and mutation. Alternatively, Mr. Saha has argued that the instant case is squarely covered by Article 58 of the schedule to the Limitation Act which contains that in suits relating to declarations, the period of limitation is 3 years which begins from the date right to sue first accrues.

5. In support of his contention, Mr. Saha has relied on the following cited judgements:-

- ***Church of Christ Charitable Trust and Educational Charitable Society vs. Ponniamman Educational Trust, (2012) 8 Supreme Court Cases 706***
 - ***Hari Sanker Jain vs. Sonia Gandhi, (2001) 8 Supreme Court Cases 233***
 - ***T. Arivandandam vs. T.V. Satyapal & Anr., (1977) 4 Supreme Court Cases 467***
 - ***Virender nath Gautam vs. Satpal Singh & Ors., (2007) 3 Supreme Court Cases 617***
 - ***Harkirat Singh vs. Amrinder Singh, (2005) 13 Supreme Court Cases 511***
 - ***Azhar Hussain vs. Rajiv Gandhi, 1986 (Supp) Supreme Court Cases 315***
 - ***Khatri Hotels Private Limited & Anr. vs. Union of India & Anr., (2011) 9 Supreme Court Cases 126***
 - ***Rajeev Gupta & Ors. vs. Prashant Garg & Ors., 2025 SCC OnLine SC 889***
 - ***Dahiben vs. Arvindbhai Kalyanji Bhausali (Gajra), (2020) 7 Supreme Court Cases 366***
6. Per contra, Learned Senior Counsel, Mr. Malay Kr. Ghosh, appearing on behalf of the KMC at the very outset has

vociferously contended that the suit filed by KMC is not barred by the law of limitation as in the said suit KMC claimed decree for declaration in prayers (a) and (b) and decree for recovery of possession in prayer (c) of the plaint. As the main relief is of possession therefore the suit must be governed by Article 65 of the Limitation Act which deals with suit for possession of immovable property or any interest therein based on title and the limitation in those cases is 12 years and as the instant suit has been filed on 18.08.2016 i.e. well within 12 years as prescribed, the suit is not barred by limitation.

- 7.** Before parting with, Mr. Ghosh regarding the issue of 'cause of action' has contended that cause of action implies right to sue. If according to the petitioner, the claim of KMC in the suit is barred by limitation, then the plaint indeed discloses cause of action. Therefore, the plea of non-disclosure of cause of action under Order 7, Rule 11(a) of C.P.C is different from the plea that there is no cause of action in the suit as alleged. From the averments made in the plaint filed by K.M.C, it is clear that K. M. C (the plaintiff) has pleaded a cause of action for filing the suit seeking the reliefs stated in it. For the limited purpose of determining the question whether the plaint is to be rejected

under Order 7, Rule 11(a) of C.P.C., 1908 or not the averments made in the plaint and documents annexed to and referred to in the plaint are only to be looked into.

8. In order to further buttress his plea, Mr. Ghosh has relied on the following cases:-

- ***Sopan Rao & Another vs. Syed Mehmood & Others, (2019) 7 Supreme Court Cases 76***
- ***Jay Cooke vs. Henry S. Gill & Another, (1873) 8 LR 107 (116)***
- ***State of Orissa vs. Klocknera and Company & Others, (1996) 8 Supreme Court Cases 377***

9. Ld. Counsel, Mr. Satyajit Talukder, appearing on behalf of the K.M.D.A., has argued that the KMDA is the owner of the land in question ad measuring about 5.61 acres. The said land was acquired by the State in various LA cases and possession thereof was made over to the KMDA on 24.09.1973. Subsequently, by executing Deed of Conveyances on 08.04.2006 and 22.02.2006 respectively, the right, title and interest in the said land was vested by the State in favour of the KMDA and thereby the KMDA became the absolute owner of the land, to the exclusion of all others. Thereafter, KMDA

leased out the said land to the defendant no.1/petitioner herein in 2007 for a period of 99 years for setting up of 5/7 Star Hotel on the demised land. Afterwards, the defendant no.1/petitioner applied before the plaintiff/opposite party herein being the KMC for mutation and accordingly KMC assessed the annual valuation of the property to the tune of Rs. 13,27,71,870/- from 3rd quarter of 2008.

- 10.** It has been further argued that, In the instant case, a cumulative reading of the plaint would clearly suggest that the dispute sought to be raised in the plaint is not only unreal, absurd and frivolous one but the same is also barred by law on the face of it. The Hon'ble Supreme Court in catena of judgments has held that the Court should not encourage to allow a luxury litigation and should eliminate the mala fide litigations. Therefore, the factum of ownership as allegedly contended in the plaint is absolutely baseless and frivolous. The cause of action for filing the suit by the KMC cannot arise on 16.06.2016 as allegedly contended in the plaint as the KMDA has been in lawful actual physical possession of the land since 1973 by dint of acquisition in accordance with law. The plaintiff/KMC purposely in order to save limitation has put

an imaginary date of cause of action in the plaint and nothing has been placed on record in support thereof.

11. In support of his contention, Mr. Talukder relied on the following cases:-

- ***PBR Towers Pvt. Ltd. & Anr. vs. Sri Narsing Das Gupta & Ors., 2016 SCC OnLine Cal 3225***
- ***Mayar (H.K.) LTD. And others vs. Owners & Parties, Vessel M.V. Fortune Express and others, (2006) 3 Supreme Court Cases 100***
- ***State Trading Corporation of India Limited & Anr. vs. Glencore Grain B. V., (2016) 2 WBLR (Cal) 286***
- ***V. Chandrasekaran and Another vs. Administrative Officer and others, (2012) 12 Supreme Court Cases 133***

Analysis:-

12. Considering the rival contentions following issues are required to be adjudicated by this Court :-

- A. Whether there was any cause of action delineated in the plaint or not?
- B. When the cause of action arose?

C. Whether the suit is barred by law of limitation in terms of provision of Order VII Rule 11 (d) of the CPC?

Issue A. Cause of Action:-

13. A cause of action in a civil suit refers to the legal basis or grounds upon which a plaintiff brings a law suit against a defendant. It's essentially the legal theory that justifies the plaintiff's right to seek relief from the Court. The legal definition of cause of action is a "bundle of facts" or "material facts" which, if traversed or contested, would require the plaintiff to prove in order to establish their right to judgment. It comprises every fact necessary to support the claim, forming the foundation of the suit, and includes the circumstances or acts that give rise to the legal right or grievance. It is not limited to the infringement of a right but encompasses the entire set of material facts in support of the claim. The cause of action is distinct from evidence as it is the set of facts that must be proved to succeed in a claim.

14. In this case at hand, the plaintiff has meticulously delineated their cause of action through paragraphs 1 to 55 wherein each averment constitutes the substantive foundation and subject matter for adjudication in the present suit.

Consequently, such fundamental pleadings, being intrinsically woven into the fabric of the main controversy, cannot legitimately form the basis for an application under Order VII Rule 11 of the CPC, as they demand thorough judicial scrutiny through the regular trial process rather than summary dismissal. In this regard, I am agreeable with the contention raised by Mr. Ghosh. Therefore, it would be pertinent to clarify that factual nomenclature of all the cases relied on by Mr. Saha on behalf of the petitioner with regard to the specific issue of cause of action finds no bearing with the factual matrix of the case at hand.

- 15.** In the aforesaid view of the matter, this Court is unable to come to a definite conclusion regarding non-existence of cause of action while disposing an application under Order VII Rule 11 of the CPC.

Issue B. When the cause of action arose:-

- 16.** According to Mr. Ghosh, Ld. Senior Counsel, appearing on behalf of the KMC, the Corporation (KMC) first became aware of the fact that the defendant no. 3 qua KMDA was representing itself to be the owner of the suit property from the pleadings in Writ Petition no. 4928 (W) of 2015 and the appeal

preferred by the plaintiff/opposite party no. 1 in MAT No. 171 of 2016 and accordingly has tried to make this Court understand that the cause of action in this case arose on 6th June, 2016. In this regard, reliance has been placed on paragraph 49 of the plaint itself.

17. Per contra, Mr. Saha Learned Senior Counsel appearing on behalf of the petitioner regarding the issue of cause of action has vociferously contended that the cause of action actually arose on 20.02.2006 when the defendant 3/opposite party no.2 i.e. KMDA published a notice in 'The Times of India' thereby inviting bids for grant of lease for the purpose of constructing a five/seven star hotel over the suit property. That apart, it has been further submitted that a lease deed was executed between the petitioner and KMDA on 28.09.2007. Moreover the plaintiff qua KMC itself mutated the name of the defendant no. 3/opposite party no. 2 qua KMDA as lessor and defendant no. 1/petitioner as lessee over the suit property and even gave sanction to the building plan for the erection of the hotel over the suit property. To substantiate such contention, Mr. Saha has referred to the averments delineated in paragraphs 45-52 of the plaint itself.

18. Now in this trying situation, even if I ignore the contention of Mr. Saha regarding the fact that the actual cause of action should commence from the date of publication of notice i.e. 20.02.2006, still the factum of admitted lease deed dated 28.09.2007 cannot be over looked while adjudicating the issue of commencement of cause of action. In this regard, it would be pertinent to set out the settled principle of law that a 99 year Lease Deed must be compulsorily registered in India and that registration is mandatory for lease periods exceeding 11-12 months, and since 99 years far exceeds this threshold, registration is required by law. When a lease deed is registered, it creates **constructive notice** to the world at large. This is a fundamental principle of property law especially/particularly provision of Section 3 of property law where registration serves as public notice of the transaction. The registration system is designed to provide transparency and protect the interest of all parties by making property transactions publicly accessible. Therefore, registration of a 99 year lease deed serves as constructive notice to the entire world, protecting lessee's rights and informing all potential stakeholders about the existence and terms of the lease arrangement.

19. Keeping in mind the aforesaid principle, it cannot be said that the plaintiff/opposite party no. 1 only came to know about the fact that KMDA was representing itself to be the owner of the suit property from the pleadings in connection with Writ Petition No. 4928 (W) of 2015 and appeal preferred by the plaintiff/opposite party no. 1 in MAT No. 171 of 2016 and therefore the cause of action only arose on 06.06. 2016. Cause the execution of lease deed is in itself a constructive notice to the world and KMC cannot take leverage of the plea that they were unaware. This plea is even more surprising cause admittedly afterwards the KMC itself accorded sanction to the building plan over the suit property which has been ratified by KMC itself in the plaint.

20. In the light of the aforesaid discussion this Court is of the opinion that the cause of action involved in the present lease arose during execution of the lease deed dated 28.09.2007.

21. Issue C -Whether the suit is barred by law of limitation:- Now coming to the last and most vital issue with regard to the maintainability of the suit in connection with computation of statutory period as prescribed under law of limitation, Mr. Ghosh on behalf of the KMC has argued that in

the said suit KMC has claimed decree for declaration in prayer (a) and (b) of the plaint and decree for recovery of possession of the suit property in prayer (c) of the plaint. Therefore, the suit filed by the KMC is a suit for possession based on title and therefore it must be governed by the provision of Article 65 of the Limitation Act which deals with a suit for possession of immovable property or any interest therein based on title for which the limitation is 12 years. As the instant suit has been filed on or about 18.08.2016 i.e. well within 12 years as prescribed under Article 65 of the schedule to the Limitation Act, the instant suit is not barred by law of limitation. In this context, specific emphasis has been laid on the case of **Sopan Rao** (supra).

22. In opposition, Mr. Saha on behalf of the petitioner has averred that the instant case squarely falls under Article 58 of the Limitation Act which deals with suits relating to declarations and the period of limitation in those cases is three years which begins from the date when right to sue first accrues. In order to further substantiate this specific contention, Mr. Saha has taken recourse of the Judgment of the Hon'ble Apex Court in **Rajiv Gupta** (supra) wherein it has

been categorically held that a suit which seeks for declaratory reliefs will not attract Articles 65 of the Limitation Act, 1963 since any further prayer for possession would be consequent to the declaratory relief. In other words, when a suit is filed for declaration of title and recovery of possession, the limitation period is required to be considered with respect to the substantive relief of declaration, which would be **3(Three)** years from the date the right to sue accrues. As a result, the plaintiff/opposite party no. 1 is barred by limitation in filing the instant suit for declaration as it has been filed after almost 10(Ten) years which is not permissible in view of Article 58 to the schedule of the Limitation Act. Moreso, no grounds of exemption have been sought under Order VII Rule 6 of the CPC by the plaintiff even to overcome the hurdle of law of limitation.

23. **Sopanrao** (supra) dealt with a suit in which the main prayers were the declaration of right of inamdars of the subject land in favour of the plaintiffs and also for possession of the same. Hon'ble Apex Court only focused on the possession of the land in question which was handed over to a Trust, under the name and style of Namdeo Deosthan, by the Government. It is also pertinent to mention here that the Hon'ble Apex Court

relied on the findings of the Ld. District Judge which was confirmed by the High Court on the issue of title. Hon'ble Apex Court picked up only the issue of handing over the subject land to the trust by the Government while there was nothing on record to show the land was entered in the name of trust prior to 29.01.1973 when Assistant Charity Commission, Latur allowed the application filed on behalf of the trust without issuing any notice to the inamdars/mutawallies and on the basis of this order Government handed over the land to the trust.

24. In the case at hand, plaintiff not only prays for a decree of declaration of the title of the subject property mentioned in the schedule to the plaint but also prays for declaration that the lease dated 28.09.2007 executed between defendant no. 3 (KMDA) and defendant no. 1/petitioner herein is void *ab initio* along with other prayers for decree for recovery of possession and permanent injunction. Therefore, nomenclature and prayers of the suit involved in this Civil Order cannot be said to be identical with that of the **Sopanrao** (supra). As a result, the observations made by the Hon'ble Apex Court therein cannot

be said to be squarely applicable to the instant case dealt with by this Court.

25. Whereas the ratio *decidendi* emanating from the distinguished judgments of ***Singhvi in Khatri Hotels Pvt. Ltd.*** (supra) and ***Rajiv Gupta*** (supra) relied upon by the Ld. Counsel for the petitioner crystallizes the fundamental jurisprudential principle that in a suit seeking declaration of title coupled with consequential reliefs, the paramount and principle prayer remains the declaration of the title itself, rather than ancillary consequential relief for recovery of possession.

26. Applying the aforesaid principle to the facts of the present case, it is observed that the opposite party no. 1/plaintiff could have filed the suit within 3 years from the date when right to sue first accrued in terms of provision of Article 58 of the Limitation Act 1963 which runs as follows:-

<i>Description of Suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
58. <i>To obtain any other Declaration.</i>	<i>Three years</i>	<i>When the right to sue first accrues.</i>

27. Drawing upon the wisdom of precedential judicial determinations in matters of similar import, the cause of action rightfully accrued to the plaintiff in the year 2007 at the very latest, thereby necessitating that the present suit should have been duly instituted before the Jurisdictional Court by the year 2010, in faithful compliance with the statutory mandate prescribed under Article 58 of the Limitation Act.

28. Therefore, I am not agreeable with Mr. Ghosh that the principle prayer sought in the present suit pertains to recovery of possession, for which prescribed period of limitation stands at 12 years as enshrined under Article 65 of the Limitation Act.

29. Applying the aforesaid dictum to the facts of the present case, this Court observes that the limitation period expired in the year 2010 itself and the suit was filed belatedly in the year 2016. The cause of action by then faded and paled into oblivion. The right to sue stood extinguished. The suit is barred by law as it has been filed beyond the prescribed period of limitation as per Article 58 to the schedule to the Limitation Act. Hence, the suit is barred under Order VII Rule 11 (d) of the CPC as well. I, therefore, have no hesitation in rejecting the plaint in Title Suit No. 2611 of 2016 filed by the plaintiff

/opposite party no. 1 herein even in the absence of any evidence being recorded on the issue of limitation. This is on the admitted facts.

- 30.** Thus, on the basis of Order VII Rule 11 of the CPC read with Article 58 of the Limitation Act the plaint qua in Title Suit No. 2611 of 2016 stands rejected.
- 31.** Consequently, the revision application being no. CO 1487 of 2018 stands allowed. Parties to bear their respective costs.
- 32.** Connected applications, if any, stand disposed of accordingly.
- 33.** All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.
- 34.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]