

*

HIGH COURT OF DELHI AT NEW DELHI

+

LPA No.350/2008

M/S. L.D. NAYYAR & SONS Appellant
Through Mr.Sandeep Sethi, Sr.Advocate with
Mr.S.K.Chaudhary and Mr.Lakshya
Sahni, Advocates

Versus

PUNJAB NATIONAL BANK & OTHERS Respondents
Through Mr.Dhruv Mehta with
Mr.Y.P.Chandna,
Mr.Yashraj Singh Deora for PNB
Ms.Monika Garg with Ms.Pavinder
Kaur, Advocates for UOI

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE S.MURALIDHAR

1. Whether reporters of the local papers be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

%

JUDGMENT
29.07.2008

1. The appellant is the original writ petitioner. The writ petition was filed for quashing the proceedings and orders made under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 in respect of the premises being two shops owned by the respondent bank, situated at Punjab National Bank building, Arya Samaj Road, Karol Bagh, New

Delhi. The Estate Officer directed eviction by order dated 24th August, 1991 and the Additional District Judge acting as the Appellate Authority rejected the appeal by his order dated 24th August, 2001. The writ petition was dismissed by the learned single Judge by a detailed and exhaustive order.

2. The principal argument of the counsel for the appellant is based on the guidelines issued by the Central Government in 1992 and the subsequent clarifications issued, leading upto 2002 guidelines. In particular, reliance was placed on the following portion of the guidelines:

“Resorting to PP Act to vacate authorized tenants merely to secure possession of the premises to accommodate the PSU’s employees, or for commercial redevelopment or to open a branch cannot be totally against the spirit of the guidelines for protecting interests of genuine authorized tenants....”

3. We are afraid the argument is misconceived. It is well settled that the administrative guidelines cannot supplant the power to invoke a speedy remedy to evict tenants whose arrangements ended almost two decades ago. The guidelines cannot be fetter on statutory powers conferred under the Public Premises (Eviction of Unauthorised Occupants) Act. In ***Uttam Prakash Bansal v. Life Insurance Corporation of India*** 100 (2002) DLT 97 this Court has held that a

tenancy terminated earlier to issuance of the guidelines could not be tested on the basis of its terms and that in any case those guidelines could not supplant statutory power under the Act.

4. Learned counsel for the appellant brought to our notice the following observations of a Division Bench of the Bombay High Court in ***Minoo Framroze Balsara v. Union of India & Others*** AIR 1992 Bombay 375:

“.....The consequence of giving overriding effect to the provisions of the Public premises Act is that premises belonging to companies and statutory bodies referred to in Clauses (2) and (3) of Section 2(e) of the Public Premises Act would be exempted from the provisions of the Rent Control Act. The provisions of the companies and statutory bodies mentioned in Clauses (2) and (3) of Section 2(e) of the Public Premises Act while dealing with their properties under the Public Premises Act will, therefore, have to be judged by the same standard. It may, therefore, be concluded that the Government company or corporation must so act not only when terminating the authority of an occupant of public premises of its ownership to occupy the same but also when, thereafter, it seeks his eviction therefrom. The Estate Officer, in making the inquiry under Section 5, would therefore, have to consider whether or not the termination of the authority was informed by reason and guided by public interest and also whether his eviction satisfied the same tests. This necessarily would also apply in appeal.”

Learned counsel submitted relying on the above observations that mere termination of tenancy is not sufficient and it is necessary to consider whether or not the termination of authority was informed by reason and guided by public interest and also whether the eviction satisfies the

same tests. He submitted that the bank has particularly failed to show its bona fide requirement and the only object of initiation of these proceedings is profiteering and the bank does not require the premises for its purpose.

5. The Appellate Authority has dealt with this issue in its judgment in paragraph-4 which is reproduced below:

“A perusal of the record shows that said Sh.D.R.Vij was the Manager and Principal Officer of the respondent bank, when the notice terminating the tenancy of the appellant was issued and also when the eviction proceedings under the Act were initiated, as is evident from the initial petition filed by the respondent. No doubt, this witness in cross examination admitted that he retired from the service of the respondent bank in March, 1989 but the fact remains that he worked as Senior Manager at the branch of the respondent bank from May, 1985 to April, 1997. He categorically stated that the branch of the respondent bank since was having increased number of Pension A/cs and there was new formulas/instructions from Government and RBI about the revised formula, the workload had increased in the pension branch and as such warranted increase of the staff. The Bank also wanted to introduce the computerized system in the branch for which computers and other machines were to be installed and separate air-conditioning cabinets were required. The Unit Trust of India had also opened it's a/c known as Ulip with the branch. The Government work relating to Customs and Excise was also entrusted to the said branch. All this required more space and staff. Besides there was request from certain other branches also for keeping old record in the said branch. According to him, there was also instruction to introduce Foreign Exchange Service at the said branch. All these activities were prevailing when the said witness was working as manager and thereafter remained as Senior Branch Manager in the said branch. Thus, he was the right person

to depose about the bona fide need of the branch regarding the premises occupied by the appellant. No doubt there is no documentary evidence produced by the respondent before the Estate Officer but there was no bar for the appellant to call for it making a request before the Estate Officer. No such request was made or such intention was shown during the pendency of the appeal. Thus, from the depositions of this witness, one can easily come to a conclusion that the branch office of the respondent needed expansion for which the premises occupied by the appellant were required."

5. Thus, there is a clear finding of fact recorded that requirement of the bank is genuine. No interference is therefore called for with the order of the learned single Judge. The appeal is accordingly dismissed. However, since the appellant is in possession of the premises, three month's time is granted to them to vacate the premises subject to filing an undertaking in this Court within four weeks that the appellant will not transfer, alienate or part with possession of the shops in question till the actual possession is handed over to the respondent bank.

CHIEF JUSTICE

**S.MURALIDHAR
JUDGE**

JULY 29, 2008
'V'