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IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA No. 167 OF 2012

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Judgment Delivered on: 28.02.2012

RASHTRIYA ISPAT NIGAM LTD.

... APPELLANT

Through :

Mr. N.K. Kaul, Sr. Adv. with
Mr. Pratap Venugopal,
Ms. Surekha Raman, Mr. Varun
Singh, Mr. Gaurav Nair, Advs.

VERSUS

DELHI DEVELOPMENT AUTHORITY

... RESPONDENT

Through:

Mr. Ajay Verma with
Mr. Munesh Kumar, Advs.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. RAJIV SAHAI ENDLAW

A.K. SIKRI, ACTING CHIEF JUSTICE:

1. A notice to show cause dated 17th December, 2007 was issued by the DDA to the appellant herein as to why damages of ₹6,25,71,881/- be not imposed upon it for unauthorized use and occupation of commercial premises measuring 22 bighas and 10 biswas in Village - Barwala, Delhi for the period from 6th October, 2005 to 31st December, 2006. The appellant disputed the liability. However, order under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as "PP Act") was

passed by the Estate Officer imposing the aforesaid damages. The appellant filed appeal there against questioning the liability on various grounds. This appeal was dismissed by the appellate authority vide order dated 15th November, 2010. Thereafter, appellant preferred writ petition assailing the order of the appellate authority. In this writ petition mainly three grounds were raised by the appellant, namely :

- (i) There was an inordinate delay of two years in passing the order by the Estate Officer;
- (ii) No positive evidence was led by the DDA to justify the imposition of the exorbitant damages and no opportunity was granted to the appellant to lead evidence ; and
- (iii) The appellant was not responsible to pay any damages and the liability if any was that of M/s. VTC Transport Limited (hereinafter referred to as 'VTC') which had been awarded consignment agency by the appellant and the aforesaid premises were taken on rent by VTC from the landlord before the land was acquired by the DDA.

2. The learned Single Judge has accepted the contention of the appellant that there was no positive evidence led by the DDA to establish the quantum of damages. On this ground, the orders of the authorities below have been set

aside and matter is remanded back to the Estate Officer for a prompt decision afresh after the respondent is permitted to lead the evidence. Because of this reason first ground of delay also does not survive. However, insofar as the question of liability of appellant is concerned, the learned Single Judge has held that the liability to pay the damages, which would be determined, would be that of the appellant. It is this part of the order which is not palatable to the appellant and, therefore, present appeal is preferred on this limited aspect.

3. Before we take note of the contention of the parties and appreciate the same, we would like to give some background under which the use and occupation of the aforesaid premises became unauthorized. In June 2000, the appellant had awarded consignment agency on certain terms and conditions for which agreement was entered between the appellant and the VTC. VTC had represented that it had taken the aforesaid premises from a landlord on rent which was available for handling and storage of iron and steel material of the appellant, which is a public sector undertaking. The material belonging to the appellant was kept in the said premises known as stockyard/stock warehouse of the VTC which was appointed as consignment agent. As per the agreement VTC was supposed to handle the arrivals, storage including security, stacking with tonnage and deliveries of iron and steel materials dispatched to the said yard as directed by the appellant. The VTC was also to

provide handling/transportation equipment i.e. minimum number of mobile cranes, trucks/ trailers equipment for bending/cutting and requisite minimum labour as well. VTC was to perform all the work involved from the stage of dispatch from the plant, receipt and clearing of consignment arriving by rail/road, their unloading, loading into trucks/trailers, transportation, stack with tonnage, storage in the yard, bending and cutting when required and delivery through rail or road as advised by the appellant. For undertaking this job various other incidental jobs to be carried out by the VTC were also mentioned in the agreement. Clause 27 which is relevant for us provides as under:-

“Clause 27

- a) The ownership of the material consigned to the Consignment Agent and received in the yard shall always remain with the company and the Consignment Agent shall only hold some trust for the Company. In case of any dispute or claim arising from either side in respect of the provisions of the agreement or otherwise, the Consignment Agent shall not at any time refuse permission to the Company or its authorized officers to entry into the yard and/ or in effecting/ arranging disposal of the materials or take possession of the material in the yard as the Company may deem fit. The Consignment Agent or any one claiming through or under him shall not set up any claim or title on or in respect of the materials consigned to and received in the yard, adverse to the company, during the subsistence of the agreement and/ or on expiry of termination as long the materials are not fully delivered to the Company, shall not allow or suffer the sad

materials to be attached or sold in any court proceedings or any receiver or special offer to be appointed in respect of them.

- b) The Consignment Agent shall not hypothecate and/ or pledge and/ or encumber in any manner whatsoever the materials dispatched to him either in full or part to any bank, financial institution or association or Company or firm or person as Security or otherwise.
- c) The Consignment Agent shall not suffer any injunction and/or attachment and/or appointment of receiver in respect of the materials dispatched to him?

4. The land in question was acquired and after acquisition it was placed at the disposal of the DDA. DDA thus became entitled to take possession of the said land. Compensation was paid to the landlord/original owner. When DDA wanted to take possession, request was made to DDA by VTC as well as appellant not to take immediate possession and give some time to enable the shifting of goods from the said place to some other place. This is how the premises remained under occupation from 6th October, 2005 to 31st December, 2006 and this occupation has been treated as unauthorized use by the DDA which compelled DDA to take out the proceedings under the PP Act.

5. Consistent stand of the appellant, questioning its liability to pay the damages, has been that it is the VTC who was to provide the stockyard at

Delhi in terms of agreement entered into between VTC and the appellant and, therefore, the liability if any is that of VTC. It was argued that in September, 2005 VTC had informed the appellant that the land in question had been sealed by the DDA and the material of the appellant had been stored therein. It was also argued that it is VTC who requested the DDA to grant time and, therefore, there was no liability of the appellant.

6. The learned Single Judge on interpreting Clause 27 referred to above, came to the conclusion that the material in question was exclusively the material of the appellant and VTC was merely an agent therefore unauthorized use of the said stockyard was by the appellant whose material was lying there and it was the appellant who had sought time from the DDA to clear the materials, therefore, liability to pay the damages is that of the appellant.

7. We are in agreement with the view taken by the learned Single Judge. Not only the material was that of the appellant, correspondence placed on record in fact clinches the issue. The appellant on coming to know that the land had been acquired and the DDA was going to seal the stockyard, wrote a letter dated 8th June, 2006 to the DDA. In this letter reference was made to the communication of VTC stating that DDA was going to seal the premises and request was made not to seal the premises and to give to the appellant 6-7

months' time in order to take the alternate action. The relevant portion of the said letter is extracted below:

“M/s. VTC Transport Limited have brought the acquisition of land by DDA to the knowledge of RINL on 27.09.2005 and they stated that the yard would be sealed by DDA. As the steel sections stocked at this yard belong to the Government of India Enterprise which is 100% Government owned, in larger public interest, Regional Manager (North) of RINL wrote a letter to The Commissioner(Land), DDA vide Ref. No.VSP/GZB/MKTG/05-06/776 dated September 27th, 2005 requesting DDA not to seal the yard and to give RINL 6-7 months time in order to take the alternate action. The copy of this letter has been sent to your office also.”

In the last para, it was stated that:

“Hence I request your goodself not to seal the yard and kindly grant another extension of 6-7 months enabling M/s. Rashtriya Ispat Nigam Limited, a Government of India Enterprise, to serve the customers at Delhi, in larger public interest.”

8. Thus, it is the appellant who wanted 6-7 months time to take alternate action and it also stated that this period would enable the appellant to serve the customers at Delhi and would also secure larger public interest. The above letter was followed by another letter dated 27th September, 2005 which is of significance. It was written to the DDA by the appellant in which appellant stated that the steel materials of the appellant valuing over ₹30 crores was stacked in the said stockyard and sealing of the premises would

affect the appellant and the appellant again requested for 6-7 months time in order to take alternate action by making following request:

“You will very kindly agree that shifting of steel materials being approximately 9 to 10 thousand MT requires considerable time. Further, shifting of Weigh Bridge and other infrastructures may also take quite some time. Sealing of the Yard will put RINL, the Government of India Enterprises, under the administrative control of Ministry of Steels will affect the RINL and as such request your goodself to consider and give us atleast 6-7 months time in order to take the alternate action.”

9. We are of the opinion that the damages under Section 7 are leviable for unauthorized use and occupation of the public premises. Use of the said premises was by the appellant which is not only clear from the agreement in question but also from the conduct of the appellant itself. Therefore, liability to pay the damages which are to be determined shall be that of the appellant. Finding no merit in this appeal, the same is dismissed.

ACTING CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

FEBRUARY 28, 2012
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