

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13th July, 2012

+ **LPA No.250/2012**

% **BAND BOX PVT. LTD.** **....Appellant**

Through: Mr. R.M. Bagai with Ms. Anu Bagai
& Ms. Damini Khaira, Advs.

Versus

**ESTATE OFFICER PUNJAB &
SIND BANK & ANR.** **..... Respondents**

Through: Mr. P.S. Bindra & Ms. S. Aggarwal,
Advs.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. This Intra-Court appeal impugns the order dated 19th March, 2012 of the learned Single Judge dismissing W.P.(C) No.8254/2010 preferred by the appellant. The said writ petition was filed challenging the order dated 2nd December, 2010 of the learned District Judge exercising powers as the Appellate Authority under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and dismissing the appeal preferred by the appellant against the order dated 23rd September, 2008 of the Estate Officer of the respondent Bank holding the appellant to be in unauthorized occupation of the ground floor showroom-cum-shop *ad-measuring* 2222 sq.

ft. bearing no.18/90, Connaught Circus, New Delhi and directing the eviction of the appellant therefrom.

2. The thrust of the argument of the counsel for the appellant is that the proceedings for eviction before the Estate Officer were in contravention of the guidelines dated 5th August, 1992 and guidelines of the year 2002 of the Ministry of Urban Development, Govt. of India advising against the resort to the provisions of the PP Act for evicting *bonafide* tenants whose tenancy had expired or lapsed. It is also contended that the said guidelines were accepted by the respondent Bank and notwithstanding the same, the provisions of the PP Act have been resorted to against the appellant.

3. As far as the said argument is concerned, we have recently had an occasion to deal with the same in our judgment dated 23rd March, 2012 in LPA No.977-80/2011 titled ***Life Insurance Corporation of India v. Damyanti Verma*** and in our judgment dated 11th May, 2012 in LPA No.9/20012 titled ***Indian Institute of Public Opinion Pvt. Ltd. v. Life Insurance Corporation of India***. We have held that the said guidelines do not come in the way of resort to the provisions of the PP Act. Need is therefore not felt to discuss the said aspect in detail and suffice it is to state that we reiterate the view taken in the aforesaid two judgments.

4. As far as the argument of the acceptance of the said guidelines is concerned, from the resolution of the Board of Directors of the respondent Bank, it is found that the appellant was held to be a leading drycleaner of the city enjoying the status of a large business house/commercial enterprise and not found entitled to benefit of guidelines, in consonance with the

clarification issued by the Ministry qua the guidelines.

5. In this respect it may also be noticed that the appellant earlier also had preferred W.P.(C) No. 1570/2007 impugning the proceedings before the Estate Officer *inter alia* on the grounds of the guidelines aforesaid. The said writ petition was dismissed vide detailed judgment dated 12th May, 2008 holding that the said guidelines could not come in the way of the respondent invoking the remedy under the PP Act for evicting the appellant. It was also held that the appellant by its conduct had disentitled itself to any relief. Intra Court appeal being LPA No.509/2008 preferred by the appellant was permitted to be withdrawn on 2nd September, 2008. We, for this reason also, are of the opinion that the appellant is not entitled to make any challenge to the eviction order on the basis of the said guidelines, the second time round.

6. The counsel for the appellant also raises a plea of discrimination. It is contended that while against certain other tenants, the respondent Bank had initiated proceedings under Section 14(1)(k) of the Delhi Rent Control Act, 1958, against the appellant the provisions of the PP Act have been resorted to. It is argued that there is no policy of the respondent Bank in this regard and the respondent Bank indulges in a policy of pick and choose in selecting the forum, whether before the Rent Controller or Civil Court or the Estate Officer for initiating proceedings against its tenants and of which the forum of Civil Court and Rent Controller is advantageous to the tenants/occupants. We are afraid, we do not find any merit in the said plea also. Once it is held that the jurisdiction of the Estate Officer was validly invoked, the same cannot be faulted with merely for the reason that the jurisdiction of the Civil Court or of the Rent Controller is invoked against others. There is no

concept of negative equality in law. We may however notice that the counsel for the respondent Bank has clarified that the proceedings against another tenant before the Rent Controller, instance whereof is given, were filed way back in the year 1986 when the law was not clear and avers that since the time the law has been settled in *Ashoka Marketing Ltd. Vs. Punjab National Bank* (1990) 4 SCC 406, the respondent Bank has not invoked the jurisdiction of any fora other than that of the Estate Officer. We, in our judgment in *Indian Institute of Public Opinion Pvt. Ltd.* supra have also held that as per the dicta of the Constitution Bench in *Ashoka Marketing Ltd.*, the provisions of the PP Act override the provisions of the Rent Act.

7. The only other contention of the counsel for the appellant before us is that one of the Estate Officers who handled/dealt with the proceedings against the appellant during the long spell of eight years the same remained pending before the Estate Officer, was not validly appointed as an Estate Officer. What we however find is that the appellant has not made out any case of prejudice suffered therefrom. There is no challenge to the authority of the Estate Officer who ultimately passed the order of eviction against the appellant. Against the order of the Estate Officer whose authority is challenged, the appellant had earlier preferred the writ petition and LPA aforesaid which were dismissed and withdrawn respectively and for this reason also no challenge to his authority can be made at this stage.

8. The counsel for the appellant has handed over copies of a large number of judgments. Need is not felt to discuss those which have already been dealt with in our two recent judgments cited above. Mention may

however be made of:-

- a. *Chandrika Misir v. Bhaiya Lal* (1973) 2 SCC 474;
- b. *Sunder Dass v. Ram Parkash* 1977 Rajdhani Law Reporter (SC) 227; and
- c. *Master Mayank Vashishth v. Financial Commissioner* 2004 VI AD (Delih) 546.

cited in support of the contention that jurisdiction cannot be conferred by consent. However in view of what we have observed hereinabove, the said question does not arise in the present case.

9. Moreover, it cannot be forgotten that this Bench is exercising Appellate Jurisdiction over the discretionary jurisdiction under Article 226 of the Constitution invoked by the appellant. The appellant is not found entitled to any relief also on the ground that though while issuing notice of this appeal interim stay of the order of eviction was granted subject to the appellant depositing the entire arrears but as per the counsel for the respondent Bank the said condition has not been complied with. We may also mention that there is no dispute that the tenancy of the appellant stands determined. The appellant is in possession of the valuable property of the respondent Bank, to the detriment of the respondent Bank and thereby depriving the respondent Bank from earning the prevalent letting value of the said premises which would be in excess of Rs.250/- per sq. ft. per month and which are public monies. There is no justification whatsoever for allowing the appellant to perpetuate its unauthorized occupation.

10. We therefore do not find any merit in this appeal and dismiss the same with costs of Rs.25,000/- payable to the respondent Bank.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JULY 13, 2012

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