

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

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Date of decision: 8th February, 2012

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WP(C) NO.11374/2006

OCEAN PLASTICS & FIBRES (P) LIMITED

..... Petitioner

Through: Ms. Sonali Malhotra and
Mr. Amit Sanduja, Advocates

Versus

DELHI DEVELOPMENT AUTHORITY & ANR

..... Respondents

Through: Ms. Sangeeta Chandra, Advocate for
DDA.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. The short point in controversy in this petition is as to whether a writ impugning the order of determination of perpetual lease is not maintainable for the reason of it being open to the affected person to impugn such determination in proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (PP Act).

2. This writ petition has been filed impugning the notice dated 21st November, 2005 of the respondent no.1 DDA determining the perpetual

lease with respect to the plot No. A-22 Mangolpuri Industrial Area, Phase II, New Delhi as well as the notice dated 5th May, 2006 subsequently issued by the respondent no.2 Estate Officer, DDA under Section 4 of the PP Act. Notice of the writ petition was issued and vide order dated 19th July, 2006 the Estate Officer was restrained from passing any final order pursuant to the notice (supra) under Section 4 of the PP Act issued to the petitioner. Pleadings have been completed and counsels have been heard.

3. The petitioner was granted perpetual lease of the aforesaid plot of land vide indenture dated 20th April, 1992. The respondent DDA vide notice dated 10th May, 2000 to the petitioner averred, that the building over the said plot of land was being used for commercial purpose as Anukumpa Banquet Hall; that the construction was not as per the sanctioned plan as the basement had been extended into the front, rear and side setbacks; that the mezzanine floor had been converted into a working hall; all this was averred to be in breach of the terms and conditions of the perpetual lease deed; the petitioner was asked to stop and remove the breaches and failing which the petitioner was warned that action for cancellation of the lease will be initiated. The petitioner vide its reply dated 25th May, 2000 denied that any banquet hall was functioning on the property and stated that the electricity

supply to the property had been disconnected because of the Central Pollution Control Board and the basement was lying closed on account of water seepage; the violations in the setbacks were stated to have been removed.

4. No further action was taken by the DDA till 21st November, 2005 vide notice (supra) of which date it was averred, that show cause notices dated 7th May, 1996, 4th March, 1998, 23rd June, 1999, 10th May, 2000, 31st March, 2001, 4th December, 2002 and 22nd September, 2005 had been issued regarding running of banquet hall on the property and which breach had not been stopped by the petitioner; that the respondent DDA vide the said notice dated 21st November, 2005 determined the perpetual lease deed and called upon the petitioner to remove itself from the plot of land and deliver possession thereof. The petitioner sent a representation dated 5th December, 2005 denying receipt of notices other than notice dated 10th May, 2000 (supra) and even otherwise denied any breach of the perpetual lease deed conditions. The respondent DDA was thus requested to withdraw the notice of determination of lease. The Estate Officer of the respondent DDA however issued the notice dated 5th May, 2006 (supra) under Section 4 of the PP Act and whereafter this writ petition was filed.

5. The counsel for the petitioner during the hearing has urged that the order of determination of lease is after five years of the notice dated 10th May, 2000; that inspite of denial by the petitioner of use of the premises as a banquet hall, no further reason/finding to this effect has been given in the order of determination of lease. She has also argued that under Clause IV (a) of the perpetual lease deed, forfeiture of lease and re-entry could not be effected without specifying the particular breach complained of and without requiring the lessee i.e. the petitioner to remedy the same. It is contended that determination of lease is violative of the said provision also.

6. The respondent DDA in its counter affidavit has reiterated its case of banquet hall being run on the property in contravention of the perpetual lease conditions. Reliance is placed on judgment dated 21st February, 2006 of the Division Bench of this Court in LPA 976/2004 titled ***DDA Vs. Ambitious Gold Nib Manufacturing Co. (P) Ltd*** to contend that the pleas as raised by the petitioner in this petition are to be adjudicated by the Estate Officer and the writ petition is not maintainable. Needless to say that the petitioner in its rejoinder to the counter affidavit has reiterated its case.

7. The counsel for the respondent DDA has argued that the clause IV(a) was complied with in the notice dated 10th May, 2000 receipt whereof is admitted by the petitioner also; besides *Ambitious Gold Nib* (supra), attention is also invited to *Escorts Heart Institute & Research Centre Ltd. Vs. DDA* 143(2007) DLT 472 (DB) to contend that the principle laid down in *Ambitious Gold Nib* was followed therein also.

8. The counsel for the petitioner in rejoinder has referred to *DDA Vs. Professor Ram Prakash* 2008(103) DRJ 57 (DB) in support of her contention that no action after delay of five years could have been taken.

9. The Division Bench of this Court in *Ambitious Gold Nib* undoubtedly held that the correctness or otherwise of the allegations of the DDA on the basis of which the determination of the lease has been effected is to be decided by the authority under the PP Act. It was further observed that whether the lessee had committed breach of the terms of the lease deed or not and whether the determination of the lease was legal or not are matters to be adjudicated by the concerned authority under the PP Act and cannot be gone into in exercise of writ jurisdiction. However, as far as the reliance by the petitioner on *Escorts Heart Institute* (supra) is concerned, the only

question for adjudication therein was whether after determination of lease, proceedings for eviction before the Estate Officer are maintainable or whether a civil suit for eviction is required to be instituted. The Division Bench after adverting to the judgments of the Supreme Court in *Express Newspapers Pvt. Ltd Vs. Union of India* (1986) 1 SCC 133 and *Ashoka Marketing Ltd. Vs Punjab National Bank* (1990) 4 SCC 406 held that in accordance with the judgment of the Constitution Bench in *Ashoka Marketing Ltd* (supra) observations in *Express Newspapers Pvt. Ltd* that a civil suit is required to be filed were not good law and the proceedings under the PP Act were maintainable. Though *Ambitious Gold Nib* was cited before the Division Bench but the Division Bench in para 9 of the judgment expressly held that it was not faced with the question of jurisdiction of the Estate Officer to decide whether there was any breach and whether there was valid and justified determination of the lease or not. It thus cannot be said that *Escorts Heart Institute* has also followed *Ambitious Gold Nib* on the said aspect.

10. Though the judgment of the Division Bench of this Court in *Ambitious Gold Nib* is sufficient for this Bench to dismiss this writ petition but I may notice that it was submitted before the Apex Court in *Ashoka*

Marketing Ltd. also that the question, whether a lease has been determined or not involves complicated questions of law and the Estate Officer who is not required to be an officer well versed in law cannot be expected to decide such questions and it must be thus held that the provisions of the PP Act have no application to a case when the person sought to be evicted had obtained possession of the premises as a lessee. However the said submission was not accepted by the Apex Court and it was held that merely because the Estate Officer was not required to be a person well versed in law cannot be a ground for excluding from the ambit of the PP Act the premises in unauthorized occupation of persons who had obtained possession as lessee. The Apex Court held, that a combined reading of Section 4 (providing for issuance of a notice to show cause to the person in unauthorized occupation), Section 5(providing for production of evidence in support of the cause shown by the noticee and giving of a personal hearing by the Estate Officer) and Section 8 (vesting in the Estate Officer for the purposes of holding an inquiry the same powers as are vested in a Civil Court) and Section 9 (conferring a right of appeal against an order of Estate Officer and which appeal has to be heard by the District Judge) showed that the final order that is passed in the proceedings under the PP Act is by a

Judicial Officer of the rank of a District Judge; the same also suggested that the questions as to justification for determination of lease fall within the jurisdiction of the Estate Officer.

11. Undoubtedly a two Judges Bench of the Supreme Court subsequently in *Anamallai Club Vs. Govt. of Tamil Nadu* (1997) 3 SCC 169 and which was not noticed in *Ambitious Gold Nib*, without referring to *Ashoka Marketing Ltd.* did observe that the Estate Officer under the PP Act cannot go into the correctness of the termination of the lease or adjudicate the same. However, in the light of the judgment of the Constitution Bench in *Ashoka Marketing Ltd.* and the judgment of the Division Bench of this Court in *Ambitious Gold Nib*, this Bench has to ignore the observation in *Annamallai* (supra). I may also mention that I have in judgment dated 28th January, 2011 in CS(OS) No.1507A/2000 titled *Airports Authority Of India Vs. M/S Grover International Ltd* also held that the invalidity of termination has to be set up as a defence in proceedings under the PP Act and cannot be subject matter of adjudication before any other fora. Reference was made to the Division Bench of this Court in *Fabiroo Gift House v. ITDC* 2003 (66) DRJ 243, also holding that such defences are adjudicable before the Estate Officer.

12. Even otherwise, I am of the opinion that the disputed questions of fact viz whether notices were served on the petitioner or not, whether the petitioner has used the premises as a Banquet Hall or not and whether the petitioner committed other breaches or not, cannot be adjudicated in writ jurisdiction. Moreover, the petitioner as aforesaid has alternative suitable remedy before the Estate Officer and which is already seized of the matter.

13. The petition thus fails and is dismissed. The final order before the Estate Officer having remained stayed for long, the respondent no.2 Estate Officer is now directed to pass the final order latest within three months of today. The petitioner having pursued this petition notwithstanding the reliance placed by the respondent No.1 DDA on the dicta of the Division Bench in *Ambitious Gold Nib*, the petitioner is also burdened with costs of ₹20,000/- payable to the respondent No.1 DDA within four weeks of today.

RAJIV SAHAI ENDLAW, J

FEBRUARY 8, 2012
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