

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment reserved on: July 17, 2012
Judgment delivered on: July 30, 2012

+ (i) **W.P.(C) 2691/2010 & CM No. 5377/2010**

PEAREY LAL & SONS PVT LTD. Petitioner
Through: Mr. J.L. Gupta, Senior Counsel, with
Mr. Simran Mehta and Ms. Yogita,
Advocates
versus
PUNJAB NATIONAL BANK AND ANOTHER Respondents
Through: Mr. Y.P.Chandna & Mr. Pankul
Nagpal, Advocates

+ (ii) **W.P.(C) 2922/2010 & CM No. 5810/2010**

SS KHERA Petitioner
Through: Mr. D.K.Rustagi and Mr. Arpit
Bhargava, Advocates
versus
PUNJAB NATIONAL BANK AND ORS. Respondents
Through: Mr. Y.P.Chandna & Mr. Pankul
Nagpal, Advocates for respondent
No. 1.
Mr.Mahender Sharma, proxy for
Mr.H.Nabi, Advocate for respondent
No.3 and 4.

+ (iii) **W.P.(C) 2925/2010 & CM No. 5814/2010**

S.S.KHERA Petitioner
Through: Mr. D.K.Rustagi and Mr. Arpit
Bhargava, Advocates
versus
PUNJAB NATIONAL BANK & ORS. Respondents
Through: Mr. Y.P.Chandna & Mr. Pankul
Nagpal, Advocates for respondent
No. 1
Mr.Mahender Sharma, proxy for
Mr.H.Nabi, Advocate for respondent
No.3 and 4.

+ (iv) **W.P.(C) 3025/2010 & CM No. 6042/2010**

STYLE CRAFTS Petitioner
Through: Mr.S.K.Chaudhary, Advocate

versus

PUNJAB NATIONAL BANK & ANR. Respondents
Through: Mr. Y.P.Chandna & Mr. Pankul
Nagpal, Advocates for respondent
No. 1
Mr. Jatan Singh, CGSC for UOI.

+ (v) **W.P.(C) 3026/2010 & CM No. 6044/2010**

STYLE CRAFTS Petitioner
Through: Mr. S.K.Chaudhary, Advocate

versus

PUNJAB NATIONAL BANK & ORS. Respondents
Through: Mr. Y.P.Chandna & Mr. Pankul
Nagpal, Advocates for respondent
No. 1
Mr. Jatan Singh, CGSC for UOI

+ (vi) **W.P.(C) 3028/2010 & CM No. 6047/2010**

FAIR DEALS Petitioner
Through: Mr.S.K.Chaudhary, Advocate

versus

PUNJAB NATIONAL BANK & ORS. Respondents
Through: Mr. Y.P.Chandna & Mr. Pankul
Nagpal, Advocates for respondent
No. 1
Mr. Jatan Singh, CGSC for UOI

+ (vii) **W.P.(C) 3029/2010 & CM No. 6049/2010**
USHA NANDA Petitioner

Through: Mr. S.K.Chaudhary, Advocate
versus

PUNJAB NATIONAL BANK & ORS. Respondents
Through: Mr. Y.P.Chandna & Mr. Pankul
Nagpal, Advocates for respondent
No. 1
Mr. Jatan Singh, CGSC for UOI

+ (viii) **W.P.(C) 3031/2010 & CM No. 6051/2010**

THE KHATAU MAKANJI SPINNING & WEAVING CO.LTD.
..... Petitioner

Through: Mr. S.K.Chaudhary, Advocate

versus

PUNJAB NATIONAL BANK & ORS. Respondents
Through: Mr. Y.P.Chandna & Mr. Pankul
Nagpal, Advocates for respondent
No. 1
Mr. Jatan Singh, CGSC for UOI

+ (ix) **W.P.(C) 3032/2010 & CM No. 6053/2010**

THE KHATAU MAKANJI SPINNING & WEAVING CO.LTD.
..... Petitioner

Through: Mr.S.K.Chaudhary, Advocate

versus

PUNJAB NATIONAL BANK & ANR. Respondents
Through: Mr. Y.P.Chandna & Mr. Pankul
Nagpal, Advocates for respondent
No. 1
Mr. Jatan Singh, CGSC for UOI

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. With the consent of the learned counsel for the parties, the above captioned nine petitions were heard together, as they arise out of common impugned order of 26th March, 2010 which upholds eviction of the petitioners under the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* from Shops No. 3 to 7, 9, 12 to 14 in the building known as Punjab National Bank Building, Arya Samaj Road, Karol Bagh, New Delhi (*hereinafter referred to as the 'subject premises'*). Vide this common judgment, above captioned petitions are being disposed of after having heard learned counsel for the parties in these writ petitions and upon perusal of the record and the decisions cited.

2. The factual matrix already stands noted in the eviction order and is not being reproduced to avoid unnecessary repetition. Suffice it would be to note that the subject premises were leased out to the petitioners during the years 1962 to 1966 and in the case of Ms. Usha Nanda in the year 1977.

3. Upon cancellation of the Lease Deed in respect of the subject premises by means of a statutory notice, respondent-bank had initiated the eviction proceedings under the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* on the basis of eviction petition preferred in the year 1987 wherein it is disclosed that the respondent-bank requires the subject premises for its *bonafide* use and for furtherance of its activities. Even the Estate Officer in the *Show Cause Notice* issued to the petitioners herein had disclosed that the subject premises were required by the respondent-bank for its own use.

4. In the reply to the aforesaid *Show Cause Notice*, the petitioners herein had not disputed the factum of requirement of the respondent-

bank needing the subject premises for its own use. In the evidence led on behalf of the respondent-bank, what was said by the witnesses of the respondent-bank on the *bonafide* requirement of the respondent-bank to use the subject premises, already stands reproduced in the impugned order which need not be reproduced. On the basis of the evidence led on the ground of personal necessity of the respondent-bank, the finding of the Estate Officer regarding respondent-bank requiring the subject premises for its *bonafide* own use stands affirmed in the impugned order negating the plea of the petitioners that the detail of *bonafide* requirement by stating material particulars in the eviction petition is mandatory and the evidence led beyond pleadings cannot be looked into.

5. Impugned order holds that the *Guidelines to Prevent Arbitrary Use of Powers to Evict Genuine Tenants From Public Premises under the Control of Public Sector Undertaking/Financial Institutions of the year 2002* are of advisory nature and the same cannot be a fetter of the statutory powers conferred under the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*. Even the petitioners' plea of applicability of *The Delhi Rent Control Act, 1958* and of the subject premises being a non-banking asset of the respondent-bank and thus non-amenable to jurisdiction under the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* requiring disposal under Section 9 of the *Banking Regulation Act*, has been found to be without merit by the learned District Judge/Appellate Authority.

6. At the hearing of these petitions, it was urged with much vehemence by learned senior counsel for the first writ petitioner that the possession of the petitioners in the subject premises is not unauthorised *per se* and in view of the fact that the respondent-bank

had been accepting the lease amount in respect of the subject premises even after the purported termination of the Lease Deed, therefore, the *Guidelines to Prevent Arbitrary Use of Powers to Evict Genuine Tenants From Public Premises under the Control of Public Sector Undertaking/Financial Institutions of the year 2002* ought to have been followed in letter and spirit.

7. It was also urged by learned senior counsel for the first writ petitioner that mere disclosure of the subject premises being required for bonafide use is not sufficient as it is required to be disclosed as to what kind of bonafide need is there and how much area is needed and prior to embarking upon the eviction proceedings, the respondent-bank ought to have got assessed the exact nature of respondent-bank's requirement for additional space and the survey report is required to be tested in evidence.

8. It was the precise submission of learned senior counsel for the first writ petitioner that since plea of respondent-bank of personal *bonafide* requirement of the subject premises is found to be lacking in the material particulars in the eviction notice/petition, therefore, the impugned eviction of the petitioners cannot be sustained and is required to be quashed.

9. Adopting the aforesaid submissions, it was urged by Mr.D.K.Rustagi, learned counsel for the second and third writ petitioner that despite the decision of the Apex Court in *M/s. Jain Ink Manufacturing Company vs. Life Insurance Corporation of India & Anr.*, AIR 1981 SC 670, declaring that the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* being subsequent legislation would naturally prevail over and override the provision of *The Delhi Rent Control Act, 1958* the respondent-bank had accepted petitioner –

Mr.S.S.Khera as a tenant under *The Delhi Rent Control Act, 1958* as it had sought fixation of the standard rent in the year 1983 and so the respondent-bank is estopped from invoking the provision of the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*.

10. According to learned counsel - Mr.D.K.Rustagi, the authorities below have exceeded their jurisdiction in accepting the bald statement of bonafide requirement of respondent-bank and have gravely erred in not following the *Guidelines to Prevent Arbitrary Use of Powers to Evict Genuine Tenants From Public Premises under the Control of Public Sector Undertaking/Financial Institutions of 2002*, which prohibits the bonafide occupant to be declared as unauthorised by mere serving of a simplicitor notice.

11. Mr. S.K. Chaudhary, learned counsel for the remaining petitioners during the course of hearing, while endorsing above submissions, had emphatically urged that subject premises being a non-banking asset could not have been retained by the respondent-bank for more than seven years without obtaining the RBI sanction, as required by Section 9 of *Banking Regulations Act* and so, initiation of eviction proceedings under the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*, is bad in law *per se*. It was pointedly urged by Mr. S.K. Chaudhary, Advocate that the relevant provisions applicable are of *The Delhi Rent Control Act, 1958* and resort to large scale evictions like the instant one under *the Public Premises (Eviction of Unauthorised Occupants) Act, 1971*, has resulted in grave error in the exercise of jurisdiction, thereby vitiating the eviction proceedings and the impugned Eviction Order.

12. Attention of this Court was drawn by Mr. S.K. Chaudhary, learned counsel for the remaining petitioners, to the deposition of the

witness of the respondent-bank to point out that though it was stated by respondent's witness that the permission of the Regional/ Zonal Manager was taken but no document of such permission or sanction was produced in evidence. It was vehemently urged by Mr. S.K. Chaudhary, Advocate that since the petitioners are not unauthorised occupants and are genuine legal tenants, so they ought to have been proceeded under *The Delhi Rent Control Act, 1958* and the selective eviction of the petitioners while sparing Dr. K.D. Bhalla, who is in occupation of such three similar shops, vitiates the eviction proceedings and makes the Eviction Orders palpably suspect and thus, Eviction Orders impugned herein ought to be quashed.

13. It is vehemently urged on behalf of the petitioners that the aforesaid *Guidelines* have the legislative mandate and so, they cannot be ignored or by-passed on the specious plea of being not binding as the test of reasonableness and fairness has to be met lest it would create serious prejudice to the petitioners and the persons similarly situated.

14. It was reiterated by learned counsel for the petitioners that since the pleadings regarding the absence of other reasonably suitable accommodation, *bonafide* requirement of the premises in question and the material particulars to establish the *bonafide* requirement are lacking, therefore, no amount of evidence in respect of the *bonafide* requirement can be looked into, and even the assessment report to support the claim of the respondent-bank regarding *bonafide* requirement being there was not produced in evidence, which renders the Eviction Order impugned herein as unsustainable.

15. On the aspect of discrimination, it was vehemently urged on behalf of the petitioners that Dr. Bhalla, who is occupying three

similar shops has not been evicted from the building in question and the petitioners alone have been targeted, which vitiates their impugned eviction.

16. In support of the afore-noted submissions, reliance was placed by learned counsel for the petitioners upon decisions in *M/s. Jain Ink Manufacturing Company vs. Life Insurance Corporation of India & Anr.*, (1980) 4 SCC 435; *New India Assurance Company Ltd. vs. Nusli Neville Wadia & Anr.*, (2008) 3 SCC 279; *DDA & Ors. vs. Joginder S. Monga & Ors.*, (2004) 2 SCC 297; *M/s. Dwarkadas Marfatia & Sons vs. Board of Trustees of the Port of Bombay*, (1989) 3 SCC 293; *Mohan Lal vs. Tirath Ram Chopra and Anr.*, 22(1982) DLT 1; *Padmadhar Tea Company (P) Ltd. and Ors. vs. Union of India & Ors.*, AIR 2004 NOC 467 (Gau.); *Bachhaj Nahar vs. Nilima Mandal and Anr.*, (2008) 17 SCC 491.

17. While relying upon the decision in *Shri Radhakrishan Temple Trust Maithan, Agra vs. Hindco Rotatron Pvt. Ltd. & Ors*, 87 (2012) DLT 548; *Punjab National Bank vs. Riviera Apartments Pvt. Ltd.*, 140(2007)DLT 649 (DB); *Sarup Singh Gupta vs. S.Jagdish Singh & Ors.*, AIR 2006 SC 1734; *Uttam Parkash Bansal & Ors. vs. Life Insurance Corporation of India & Ors*, 100(2002) DLT 497 (DB); *L.D.Nayar & Sons (M/s.) vs. Punjab National Bank & Ors.*, 2008 VI AD (Delhi) 217; *Heera Midha & Anr vs. Indian Tourism Development Corporation*; 2008 VII AD (Delhi) 251; *K.T.Corporation & Anr. vs. India Tourism Development Corporation and Anr.*, 2009 VI AD (Delhi) 115; in L.P.A.No.977/2001, titled as *Life Insurance Corporation of India vs. Damyanti Verma (Decd.) through LR*s, rendered on 23rd March, 2012; *M/s. Jain Ink Manufacturing Company vs. Life Insurance Corporation of India &*

Anr., AIR 1981 SC 670; *Ashoka Marketing Ltd. & Anr. vs. Punjab National Bank & ors.*, AIR 1991 SC 855, it was vociferously urged by learned counsel for the respondent- Bank that there is no illegality or infirmity in the impugned order and the eviction of the petitioners is justified, as *Guidelines of the Year 2002* though are of advisory nature but still they have been substantially complied with. With much emphasis, it was contended by learned counsel for the respondent-bank that it is no longer *res integra* that the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, override the provisions of *The Delhi Rent Control Act, 1958* as Section 3 of this legislative enactment does not protect the tenancy rights of unauthorised occupants in public premises and so, the provisions of *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* only would be applicable as the petitioners herein have become unauthorized occupants in the public premises after the lease of the subject premises coming to an end by efflux of time. Learned counsel for respondent-bank had asserted that acceptance of the dues by the respondent-bank from the petitioners after the lapse of the lease of the subject premises would not confer any right upon the petitioners to legalize their possession on the subject premises, as the payment of money was accepted by the respondent-bank from the petitioners towards the damages and not as lease money.

18. Regarding alleged lack of material particulars in the Eviction Notice, it was submitted by learned counsel for the respondent-bank that evidence is not required to be pleaded and the deposition of the witnesses of the respondent-bank sufficiently establishes the *bonafide* requirement of the subject premises by the respondent- bank. To rebut the allegations of discrimination, it was pointed out by learned

counsel for the respondent-bank that even Dr. K.D. Bhalla, who was an employee of respondent-bank in the senior management grade, has not been spared and after the retirement of Dr. K.D. Bhalla, he has been retained as part time medical Consultant to provide medical services to the officers and staff of the respondent-bank and in that context, he was allowed to retain *shops No. 10, 16 & 17* in the premises in question but since there is a *bonafide* requirement of the respondent-bank to use the subject premises for the extension of bank activities, therefore, the process to terminate the lease qua Dr. K.D.Bhalla have been initiated and in this regard affidavit of Sh. Hoshiyar Singh, Senior Manager of the respondent-bank along with supporting documents has been placed on record by learned counsel for the respondent-bank with its copy to opposite side. Thus, it is urged by learned counsel for the respondent-bank that there is no substance in these petitions which deserve dismissal.

19. Having considered the aforesaid submissions advanced by learned counsel for the parties and upon perusal of the impugned order, record of this case and the decisions cited, I find that the contentions raised on behalf of the petitioners in these petitions are virtually the same which were raised before the learned District Judge/ Appellate Authority, who has considered the same in its right perspective. In view of the dictum of a Division Bench of this Court in *Damyanti Verma (Supra)*, it can be safely said that the *Guidelines of the year 2002* are of advisory nature and do not apply to the affluent tenants. In any case, the *principle of reasonable and fairness* has to be adhered to by the authorities concerned in proceedings like the instant one.

20. In the aforesaid context, I find that plea of discrimination

vehemently urged on behalf of the petitioners while relying upon the instance of Dr. K.D. Bhalla, no longer survives for consideration in view of the affidavit of Shri Hoshier Singh, Senior Manager of the respondent-bank regarding initiation of eviction process against Dr. K.D. Bhalla as well. Since it stands sufficiently established from the evidence of the witnesses of the respondent-bank that there is *bonafide* requirement of the subject premises for the extension of the banking activities of the respondent-bank, therefore, Eviction Orders impugned herein cannot be faulted with on the specious plea of details of the *bonafide* requirement not being pleaded in the Eviction Notice. There can be no quarrel with the legal proposition that evidence is not required to be pleaded.

21. In view of the dictum of the Apex Court in *Jain Ink (Supra)*, petitioners cannot be heard to say that the provisions applicable in the case of the petitioners, who were unauthorized occupants in the subject premises after the lapse of the lease, would be of *The Delhi Rent Control Act, 1958*. As regards the acceptance of the dues by the respondent-bank from the petitioners in relation to the subject premises, after the determination of the lease of the subject premises, there is nothing in the evidence on record to show that the acceptance of the dues was towards the lease money. Infact, the respondent-bank categorically asserts that the acceptance of dues from the petitioners was towards the damages on account of use and occupation of the subject premises by them and not towards the lease money. In any case, even if it is taken that the acceptance of the dues by the respondent –Bank was towards the lease money after the Eviction Notice still in view of the dictum of the Apex Court in *Sarup Singh (Supra)* regarding acceptance of rent for period subsequent to

the *Notice to Quit*, by itself would not be sufficient to conclude that there was waiver of the *Notice to Quit* in the eviction proceedings.

22. The foundation for asserting that prior permission of Reserve Bank of India to retain the subject premises as a non-banking asset by the respondent-bank beyond the period of seven years has not been firmly laid, as Mr. D.R. Vij, witness of the respondent-bank had pleaded ignorance about such a requirement and is infact non-committal about it. There is no further cross-examination of the witnesses of the respondent-bank on this aspect. Otherwise also, it is not shown as to how the petitioners are prejudiced on account of non-obtaining of the permission from the Reserve Bank of India to retain the subject premises because non-obtaining of such permission does not appear to be fatal *vis-à-vis* the petitioners and the respondent-bank. In any case, on this account the petitioners do not get a right to retain the subject premises. It needs no reiteration that the prejudice cannot be presumed and has to be proved. No such attempt has been made by the petitioners to establish that they were prejudiced in any manner whatsoever on account of purported violation of Section 9 of the *Banking Regulations Act*.

23. Since the plea of discrimination is no longer available to the petitioners in view of the fact that eviction process has been initiated Dr. K.D. Bhalla, therefore, no worthwhile challenge to the impugned Eviction Orders remains as resort to the provisions of the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*, has been validly made by the respondent-bank to seek the eviction of the petitioners from the subject premises and in view of the fact that the possession of the petitioners on the subject premises becomes unauthorized *per se*, upon lease of the subject premises coming to an

end by efflux of time. It would be relevant to note that the petitioners had not sought renewal of lease after its expiry, at any point of time. In this context, it assumes significance that the petitioners in response to the Eviction Notice have not disputed the ground of eviction being *bonafide* necessity of the respondent-bank.

24. Upon considering these petitions in its entirety, I find no jurisdictional or palpable error in the impugned order affirming the eviction of the petitioners from the subject premises. Consequently, all the nine writ petitions are dismissed while leaving the parties to bear their own costs.

25. These writ petitions and the pending applications are accordingly disposed of.

(SUNIL GAUR)
JUDGE

JULY 30, 2012
pkb/rs