

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

Date of decision: 30th January, 2012

+ LPA No. 54/2012 & CM No.s 1416-18/2012

% M/S PRADEEP OIL CORPORATION Appellant
Through: Mr. V.K. Gupta & Mr. Jayant Nath,
Sr. Advs. with Mr. B.C. Pandey &
Mr. Udit Gupta, Advs.

Versus

UNION OF INDIA Respondent
Through: Mr. R.N. Singh with Mr. A.S.
Singh, Advs.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

RAJIV SAHAI ENDLAW, J.

1. This intra Court appeal impugns the judgment dated 08.11.2011 of a Single Judge of this Court dismissing W.P.(C) No.4694/2011 preferred by the appellant herein. The said writ petition was filed by the appellant to restrain the respondent Railways from carrying out any demolition on and from dispossessing the appellant from premises at 13 KM, Rohtak Road,

Shakur Basti, Delhi -110 056 and impugning the notice dated 27.12.2010 issued by the respondent Railways to the appellant. The writ petition was filed on 07.07.2011 when the action of demolition and dispossession was already underway.

2. The writ petition was taken up for hearing on 07.07.2011 itself, when the counsel for the respondent Railways appearing on advance notice stated that the writ petition had become infructuous as the respondent Railways had taken complete possession of the premises in question on 06.07.2011 and had also handed over the site for construction of coaching terminal. The said statement of the respondent Railways was controverted by the appellant and in view of the conflicting stands with regard to possession, *status quo* was directed to be maintained.

3. The facts, not in dispute are, that the respondent Railways had vide indentures dated 15.03.1975 and 03.01.1978 granted the land aforesaid to the appellant; the appellant, with the consent of the respondent Railways, had raised construction comprising of an administrative block and three huge petroleum steel storage tanks on the said land; the respondent

Railways in or about the year 1988 terminated the rights of the appellant over the said land and directed the appellant to vacate the same and initiated proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971; the Estate Officer vide order dated 28.03.1990 dismissed the said proceedings; the respondent Railways preferred an appeal before the Additional District Judge but which was also dismissed on 18.12.2007; the respondent Railways preferred W.P.(C) No. 8071/2008 against the order of the learned Additional District Judge but the said writ petition was also dismissed vide order dated 25.11.2010. Since the appellant before us relies on the said order, it is deemed apposite to set out the same herein below:

“3. As far as the writ petition is concerned, the Addl. District Judge has inter alia held that the appeal did not lie against the order of dismissal of application under Sections 4 and 7 of the PP Act by the Estate officer. He has further upheld the findings of the Estate Officer of the License of the respondent having not been terminated in accordance with law and the respondent being accordingly not an unauthorized occupant.

4. It is felt that no purpose will be served in keeping this petition pending. The findings of the Estate Officer affirmed by the Addl. District Judge in appeal are findings of fact. The petitioner rather than wasting time in this petition would be

well advised to initiate fresh proceedings for ejectment and for recovery of damages in accordance with law and which right of the petitioner is not controverted by the respondent also. The counsel for the respondent however states that the petitioner for being entitled to initiate fresh proceedings will have to terminate the license of the respondent in accordance with law.

5. The present petition is dismissed with liberty to the petitioner to initiate fresh proceedings against the respondent.”

4. It is further not in dispute that the respondent Railways thereafter served the notice dated 27.12.2010 again purporting to terminate the Deeds dated 15.03.1975 and 03.01.1978 and demanded vacant and peaceful possession of the land by 31.03.2011.

5. It is significant to record at this stage that the appellant though admits the receipt of the notice dated 27.12.2010 but neither controverted the contents of the same nor challenged the same in any proceedings. It was in pursuance to the said termination that the respondent Railways on 06.07.2011 re-entered the land and carried out demolition of the structures etc. thereon. Though the appellant in the writ petition preferred on 07.07.2011 claimed to be still in possession but there is nothing to prove

the same. On the contrary, from the averments of the appellant that the respondent Railways on 06.07.2011 came with a large force and police, it is borne out that the appellant was dispossessed from the said land on 06.07.2011 i.e. before the filing of the writ petition. Notwithstanding the writ petition thereafter having remained pending for some time, the appellant did not seek the relief of repossession. Thus to that extent, the statement of the counsel for the respondent Railways, when the writ petition first came up before the learned Single Judge on 07.07.2011 to the effect that the writ petition for the reliefs claimed was infructuous, was correct.

6. The learned Single Judge has in the judgment impugned before us held:

- (i) that the appellant by non-traverse (i.e. not replying to the notice dated 27.12.2010 of termination) accepted the termination of the Deeds and cannot be heard to assert the termination to be bad;
- (ii) that Clause 9 of the Deeds permitted termination of licence without assigning any reason;

- (iii) that the need for the respondent Railways to advert to eviction proceedings for dispossessing the appellant would have arisen only if the appellant had contested the notice of termination;
- (iv) that the question whether the appellant had been evicted by force as claimed by the appellant or had illegally sublet the land and the sublettees in occupation had voluntarily delivered possession, as contended by the respondent Railways, was a factual controversy for adjudication whereof evidence will have to be led and which could not be entertained in writ jurisdiction;
- (v) that the controversy whether the appellant was a licensee or a lessee was subject matter of a review petition pending in the Supreme Court and thus there was no need for the learned Single Judge to adjudicate thereon. It was further held that the said question even otherwise did not fall for consideration in writ jurisdiction and could be agitated in a suit;
- (vi) that no legal right of the appellant had been infringed and the appellant had not shown any prejudice to have been caused to it.

Accordingly, without expressing any conclusive opinion on whether dispossession of the appellant was peaceful or not, the writ petition was dismissed with liberty to the appellant to remove its steel structure etc.

from the premises and to file a suit.

7. The senior counsels for the appellant before us have contended that the learned Single Judge erred in holding that any review petition was pending before the Supreme Court; they invited attention to *M/s Pradeep Oil Corporation Vs. MCD* (2011) 5 SCC 270 wherein the appellant was held to be a lessee with respect to the said land and contend that though the appellant had preferred a review of the said judgment but the same was dismissed on 20.07.2011. Else, the contention raised before us is that the respondent Railways even in the absence of any reply by the appellant to the notice of termination was required to take recourse to the process of law by initiating proceedings under the PP Act for recovery of possession and could not have taken possession forcibly. Strong reliance is also placed on the order dated 25.11.2010 (supra) of this Court dismissing the writ petition preferred by the respondent Railways in culmination of proceedings earlier initiated for eviction of the appellant. It is argued that as per the said order also, the respondent Railways was to initiate “fresh proceedings for ejectment” and which has not been done. Reliance in this

regard is placed on *Bishan Das Vs. State of Punjab* AIR 1961 SC 1570 and on *State of U.P. Vs. Maharaja Dharmander Prasad Singh* (1989) 2 SCC 505 in support of the proposition that even the Government cannot dispossess forcibly and has to take recourse to the process of law.

8. The counsel for the respondent Railways appeared on advance notice and with consent, we heard the counsels finally.

9. Before we express any opinion, it is felt necessary to complete the narration by setting out certain other facts as appearing from the admitted documents.

10. The respondent Railways had vide Indentures dated 15.03.1975 and 03.01.1978 granted licence to the appellant to use the Railway land aforesaid for the purpose of constructing and maintaining thereon depot for storage of petroleum products etc. received from Railways. The said Deeds expressly prohibited use of the depot on the said land for storage of petroleum products received / carried by any other mode than the railways or for any other purpose. The said Deeds further enabled the respondent Railways to without assigning any reason and by giving three calendar

months' notice in writing terminate the licence and upon determination of the licence, re-enter and re-take and absolutely retain possession of the said land. The Deeds also provide for reference of the disputes etc. to sole arbitration of an officer to be appointed by the Divisional Superintendent, Northern Railways.

11. The eviction action earlier initiated by the respondent Railways failed *inter alia* on the ground of the notice of termination then issued by the respondent Railways being not in terms of the Agreement. However the notice dated 27.12.2010 is of three months in accordance with the Deeds *supra*.

12. As far as the judgment aforesaid of the Supreme Court is concerned, it may be stated that the same was not in a proceeding between the appellant and the respondent Railways. The same arose out of the assessment order passed by the MCD levying property tax on the appellant in relation to the land aforesaid. The said assessment order was challenged by the appellant before the Appellate Court / MCD Tribunal and ultimately the matter reached the Supreme Court. The senior counsels for the

appellant however on enquiry state that the appellant had impleaded the respondent Railways as a party in the Supreme Court, though it was not a party in those proceedings prior thereto. However it may be observed that the judgment of the Supreme Court does not record or deal with any of the contentions of the respondent Railways and deals with the contention of the appellant and the MCD only. It is not even clear whether the respondent Railways participated in the said proceedings; the occasion therefor did not arise since the claim of the respondent MCD for property tax was against the appellant only and not against the respondent Railways. The question however of interpretation of the Deeds dated 15.03.1975 and 03.01.1978 arose since the liability of the appellant for property tax depended thereon. It may also be noticed that it was the contention of the appellant in those proceedings that it was a licensee and not a lessee of the said land. Though that has been the case throughout of the appellant, including in the review petition filed before the Supreme Court and which review petition, as on the date of filing of the writ petition (from which this appeal arises) was still pending but the appellant before us contends itself to be a lessee.

13. The Supreme Court in the judgment in the dispute aforesaid between the appellant and the MCD relating to property tax with respect to the land aforesaid has held the aforesaid land to have been granted to the appellant in terms of Section 2 of the Government Grants Act, 1895 and the provisions of the Transfer of Property Act, 1882 being not applicable thereto. It was held that the Government Grants Act being a special statute prevails over the general statute i.e. the Transfer of Property Act and the rights and obligations of the parties would be governed by the Government Grants Act whereunder the Government is entitled to impose limitation and restrictions upon the grant. The Supreme Court in para 21 of the judgment also held that under the said grant, the respondent Railways had the power to re-enter upon and re-take and absolutely retain possession of the said land after determination thereof which would require three months' prior notice. It was further clarified in para 37 of the judgment that the interpretation of the Deeds dated 15.03.1975 and 03.01.1978 in the said judgment was with reference to the provisions of the Delhi Municipal Corporation Act, 1957 only. However, the finding in the said proceedings of the appellant, under the Deeds aforesaid, even though described as

licencee, was/is a lessee, shall not be binding on the respondent since the respondent was not a party to the said proceedings.

14. As far as the argument of the appellant of the respondent Railways under order dated 25.11.2010 (supra) in W.P.(C) No. 8071/2008, being required to initiate ejectment proceedings is concerned, we are of the opinion that the said order could not have and does not create any new rights in the appellant. All that was observed was that the respondent Railways should initiate fresh proceedings, which would include issuance of a fresh notice of termination and the said order cannot be construed as mandating the respondent Railways to necessarily initiate ejectment proceedings even if not required to in law.

15. Thus the matter has to be considered *de hors* the said order.

16. Undoubtedly, the Apex Court in ***Bishan Das*** and ***Maharaja Dharmander Prasad Singh*** (supra) held the necessity for even the Government to initiate ejectment proceedings. However, the said judgments did not consider the provisions of the Government Grants Act.

On the contrary, the Apex Court in the judgment aforesaid in the dispute relating to property tax between the appellant and the MCD has expressly held the provisions of the Transfer of Property Act to be not applicable and the relationship between the appellant and the respondent Railways being governed by the provisions of the Government Grants Act and further held the rights under the Transfer of Property Act and under the Government Grants Act to be materially different.

17. We are even otherwise of the opinion that much water has flown since the judgments of the year 1961 and 1989 *supra*. The Fundamental Right to property relied upon heavily in ***Bishan Das*** has since been done away with. We are exercising our jurisdiction in an appeal arising out of a proceeding under Article 226 of the Constitution of India and which is essentially a discretionary remedy. What is clearly borne out is that the appellant, by use of the legal process and which has taken considerable time, has perpetuated its use of the valuable land in the heart of the city without paying the market consideration therefor for more than 35 years and in the last 25 years against the will of the respondent Railways. The

Supreme Court in *S.P. Chengalvaraya Naidu Vs. Jagannath* AIR 1994 SC 853 has noted that the process of the Court is being abused and property grabbers, tax evaders and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal gains indefinitely. Again in *Ramniklal N. Bhutta Vs. State of Maharashtra* AIR 1997 SC 1236, it was held that whatever may have been the practices in the past, a time has come where the Courts should keep the larger public interest in mind while exercising their powers of granting stay / injunction. It was held that the power under Article 226 is discretionary and will be exercised only in furtherance of interest of justice and not merely on the making out of a legal point; the Courts have to weigh the public interest vis-à-vis the private interest while exercising the powers under Article 226 and that there are many ways of affording appropriate relief and redressing a wrong.

18. Seen in the aforesaid light, the appellant has already been dispossessed; the land is required by the respondent Railways who is the owner thereof for its own public purpose and it can safely be presumed that

the said public purpose has been held up for long owing to the appellant not vacating the said land. Even if it were to be held that dispossession of the appellant was wrongful, the right and entitlement of the appellant to continue in possession of the land has admittedly come to an end. The senior counsels for the appellant could not point out any defect in the notice dated 27.12.2011. We may also record that the Apex Court in ***Rakesh Kumar Vs. Hindustan Everest Tool Ltd.*** (1988) 2 SCC 165 and in ***Hiralal Kapur Vs. Prabhu Choudhury*** (1988) 2 SCC 172 has held that a categorical assertion by a landlord in legal notice if not replied to and controverted can be treated as an admission by the tenant. This principle applies to the present situation also. The appellant by non-traverse of the notice dated 27.12.2010 accepted the correctness thereof i.e. of termination of its rights be it as a lessee or as a licensee. Once it is held that the rights of the appellant stand terminated, even if the appellant was to be put back into possession, it would only be for a short time till evicted in accordance with law.

19. We have wondered whether the aforesaid technicality ought to be

followed. In our opinion, no. The only right of the appellant can be to claim damages for such dispossession and liberty whereof has already been given by the learned Single Judge. In this regard, it may also be noticed that the Apex Court in ***Indian Oil Corporation Ltd. Vs. Amritsar Gas Service*** (1991) 1 SCC 533 also held that where the contract is terminable in nature and the argument is of termination being not in accordance with law, the only remedy is to claim damages and not specific performance. The Supreme Court in ***Anamallai Club Vs. Govt. of Tamil Nadu*** (1997) 3 SCC 169 even though holding dispossession without recourse to procedure established by law to be bad (in that case dispossession was effected on the same day on which notice was given and which fact weighed heavily with the Court as is obvious from the observation that 10 to 15 days' time should have been given before resuming possession – per contra in the present case more than three months' time was given) still held that since possession had already been taken it need not be restored.

20. Mention may also be made of ***ITC Ltd. Vs. State of Uttar Pradesh*** (2011) 7 SCC 493 where also in paras 30 to 33 a distinction was carved out

between a lease under the Transfer of Property Act and a lease governed by a statute or statutory regulations and it was held that it is permissible for the lessor in such leases governed by a statute or statutory regulations to recover possession as provided by resuming the leased plot or building without filing a civil suit. Similarly, in para 43 of the judgement, it was observed that NOIDA (in that case) could resume possession without intervention of a Civil Court in a civil suit.

21. It cannot also be lost sight of that the appellant has throughout its dispute with the MCD been claiming itself as a licensee. The Full Bench of this Court in ***Chandu Lal Vs. MCD*** AIR 1978 Delhi 174 held that a licensee after termination of the licence is not entitled to any injunction and infact the licensor is entitled to use reasonable force to throw out the licensee from the licenced premises.

22. The Supreme Court in ***Hajee S.V.M. Mohd. Jamaludeen Bros. & Co. v. Govt. of T.N.*** (1997) 3 SCC 466 on interpretation of Sections 2 and 3 of Government Grants Act held that the terms of any grant or terms of any transfer of land made by a Government stand insulated from the

tentacles of any statutory law; that Section 3 places the terms of such grant beyond the reach of any restrictive provision contained in any enacted law or even the equitable principles of justice, equity and good conscience adumbrated by common law if such principles are inconsistent with such terms. It was held that the said provisions confer unfettered discretion on the Government to enforce any condition or limitation or restriction in all types of grants made by the Government be they by way of lease or licence.

23. For the reasons aforesaid, we do not find any case for interference in the impugned judgment to have been made out. The appeal is accordingly dismissed. The matter having been disposed of on the very first date, we refrain from imposing any costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JANUARY 30, 2012

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