

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

%

Date of decision: 29th April, 2013

+

LPA 788/2012

MARUTI SUZUKI INDIA LTD.

..... Appellant

Through: Mr. Dr. A.M. Singhvi and Mr. T.K. Ganju,
Sr. Advocates with Mr. A.K. Thakur, Mr.
R.K. Mishra and Mr. Aquib Ali, Advs.

versus

**INDIA TOURISM DEVELOPMENT CORPORATION LTD
& ANR**

..... Respondents

Through: Mr. C.M. Oberoi, Adv . with
Ms. Surekha Raman, Adv.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra court appeal impugns the order dated 30th October, 2012 of the learned Single Judge of dismissal of WP(C) 5011/2010 preferred by the appellant. The said writ petition was preferred impugning the legal notice dated 14th June, 2010 issued by the advocate for the respondent no.1 ITDC to the appellant of termination of the Lease Agreement of property No. C-119 Naraina Industrial Area, Phase 1, New Delhi with the petitioner and the consequent notice dated 1st July 2010 issued by the respondent No.2 being the

Estate Officer of the respondent No.1 to the petitioner under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act). The appellant by the said writ petition also sought to prohibit the respondents from evicting the appellant from the said property and further sought mandamus directing the respondents to allow the appellant to continue carrying on its business from the said property.

2. The learned Single Judge did not agree with the contention of the appellant that the proceedings under the PP Act were not maintainable owing to the existence of an arbitration clause in the lease agreement between the appellant and the respondent No.1 ITDC and further held that once the jurisdictional barrier is removed, there is no justification to halt the PP Act proceedings at the very inception and thus dismissed the writ petition but nevertheless held that any observations made in the said order on the merits of the disputes raised except jurisdictional dispute will not come in the way of final adjudication of the issues raised.

3. The factual controversy insofar as relevant for dealing with the contentions raised before us is as under:

- (i) the respondent No.1 ITDC is the perpetual lessee of the land underneath the aforesaid property at Naraina Industrial Area, Phase- 1 and has constructed a workshop thereon;
- (ii) the respondent No.1 ITDC sublet the property to the appellant in or about the year 1988; and
- (iii) that the sub-lease between the appellant and the respondent No.1 was extended from time to time, lastly by a registered sub-lease agreement dated 19th February, 2002 for a period of nine years w.e.f. 1st February, 2002 and expiring on 31st January, 2011 and with the appellant being entitled to renewal of sub-lease for a further period of nine years from 1st February 2011 to 31st January, 2020.

Clause 17 of the said sub lease was as under:

“17. All disputes and differences arising out or in any way touching or concerning this sub-lease agreement except those the decision whereof its otherwise herein before expressly provided for or to which the Public Premises (Eviction of Unauthorised Occupants) Act and the Rules framed thereunder which are now in force or which may hereafter come in to force are applicable shall be referred to a tribunal of three arbitrators one to be appointed by the Lessee and the second by the sub-Lessee and third by both arbitrators in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory modification or re-enactment thereof shall apply to such arbitration. The award of the Arbitrator so appointed shall be final and binding on both parties. The Arbitration & Conciliation Act, 1996 and the amendments

made therein from time to time shall be applicable. The venue of Arbitration shall be at Delhi. The Rules and Procedures of Indian Council of Arbitration shall apply to the arbitration proceedings.”

(iv) The respondent No.1 ITDC vide legal notice dated 14th June, 2010 (supra) determined the sub-lease in favour of the appellant averring breaches/violations by the appellant in the form of making additions and additional construction in the property without the consent and authority of the respondent no.1 ITDC.

(v) The appellant not only replied to the aforesaid notice controverting the contents thereof but also on 29th June, 2010 invoked the arbitration clause aforesaid in the sub-lease and nominated its arbitrator and called upon the respondent No.1 ITDC to nominate its arbitrator.

(vi) The respondent No.1 ITDC however did not nominate any arbitrator and on the contrary the respondent No.2 Estate Officer of the respondent No.1 ITDC issued the impugned notice to the appellant under Section 4 of the P.P. Act.

(vii) The appellant on the contrary, on the failure of the respondent No.1 ITDC to nominate its arbitrator, filed Arbitration Petition No. 33/2011 in this

Court under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment by the Chief Justice of the nominated arbitrator on behalf of the respondent No.1 ITDC.

(viii) It appears that the respondent No.1 failed to appear on 23rd May 2011 when the aforesaid arbitration petition was listed and in the absence of the respondent No.1 ITDC this Court disposed of the said petition appointing the arbitrator on behalf of the respondent No.1 ITDC.

(ix) The respondent No.1 ITDC thereafter applied for setting aside of the order dated 23rd May, 2011 in the Arbitration Petition No. 33/2011 and the matter was reconsidered on merits and disposed of vide order dated 29th September, 2011.

(x) It was the contention of the respondent No.1 ITDC in opposition to the said Arbitration Petition that the issues for the determination of which arbitration was invoked were clearly beyond the jurisdiction of arbitration and they fell exclusively within the jurisdiction of the Estate Officer appointed under the PP Act.

(xi) This Court in order dated 29th September, 2011 supra held that the issue which arose for determination was the validity of the lease termination notice dated 14th June, 2010; that to determine the said issue it would be necessary to determine whether the appellant had breached the terms of the sub-lease deed; the said issue could be determined only by the Estate Officer under the Act and by no other authority including by the Arbitral Tribunal. It was however held that the Estate Officer could not determine whether the respondent no.1 ITDC had violated the terms of the sub-lease deed dated 19th February, 2002 and the appellant had suffered loss and harassment due to the same and for which the respondent No.1 ITDC was liable to compensate the appellant and whether the appellant was entitled to enforce its rights to seek renewal of sub-lease. However it was observed that the decision on the said aspect would depend upon the determination of the issue whether or not the termination notice dated 14th June, 2010 was valid or not. Accordingly this Court held that the Arbitral Tribunal was presently only to determine whether the respondent no.1 ITDC had violated the terms and conditions of the sub-lease dated 19th February, 2002 and the appellant had suffered loss and harassment due to the same and for which the respondent No.1 ITDC was liable to compensate the appellant

and that the aspect of specific performance could be determined only after the decision of the Estate Officer.

(xii) The appellant has preferred SLP (Civil) No. 5373/2012 against the aforesaid order dated 29th September, 2011 of this Court in Arbitration Petition No.33/2011 and in which notice has been issued by the Supreme Court but there is no interim order.

4. The Senior Counsels for the appellant have argued –

- A. that Section 3(b) of the PP Act requires categorization of Public Premises in respect of which the Estate Officers are to exercise power;
- B. that the Government of India has vide Resolution No.21013/2000 dated 30th May, 2002 published in Gazette of India on 8th June, 2002 issued guidelines to prevent arbitrary use of powers to evict genuine tenants from public premises under the control of Public Sector Undertaking / Financial Institutions and which guidelines prescribe that a contractual agreement shall not be wound up by taking advantage of the PP Act and the Public Authorities would have rights similar to private landlords under the Rent Control Act in dealing with the genuine legal

tenants and the provisions of the PP Act should be used primarily to evict totally unauthorized occupants of premises of Public Authorities; thus invocation of the PP Act by the respondent against the appellant is contrary to the said guidelines;

- C. that the guidelines aforesaid are issued in exercise of powers under Section 3(b) of the PP Act and are thus statutory in nature;
- D. reliance is placed on para 6 of *Syndicate Bank Vs. Ramachandran Pillai* 2011 (1) SCALE 368 holding that the authorities concerned are bound to keep the said guidelines in view, to the extent possible;
- E. that the notice under Section 4 of the PP Act issued by the respondent no.2 Estate Officer is without application of mind and does not even give grounds required to be given statutorily; it is argued that though this ground was urged before the learned Single Judge but has not been considered;
- F. reliance is placed on *New India Assurance Company Ltd Vs. Nulsi Neville Wadia* (2008) 3 SCC 279 laying down in para 25 that the Estate Officer is obligated to apply his mind to form an opinion that the

respondent is a person who has been in unauthorized occupation of the public premises and that he should be evicted; reliance is also placed on ***Minoo Framroze Balsara Vs. Union of India*** AIR 1992 Bombay 375 laying down in para 34 thereof that *prima facie* satisfaction of the Estate Officer is a *sine qua non* for the issuance of the show cause notice and the notice must set out the ground on which the order of eviction is proposed to be made and that addressee cannot effectively show cause unless he knows why the Estate Officer is of the opinion that he is in unauthorized occupation and why his eviction is proposed;

G. reliance in this regard is also placed on ***Naseeruddin Vs. State of Andhra Pradesh*** MANU/DE/3150/2010 but which merely follows ***Nulsi Neville Wadia*** (supra).

H. that the question whether the validity of the termination notice dated 14th June, 2010 and the liability of the appellant to eviction thereunder is to be adjudicated by the respondent No.2 Estate Officer or by the Arbitral Tribunal is pending consideration before the Supreme Court and since the appellant at the stage of approaching the Supreme Court

did not need to apply for any stay, no interim order was sought from the Supreme Court;

- I. that the learned Single Judge has not dealt with the aspect of the proceedings before the Estate Officer being not maintainable in view of the Guidelines aforesaid and the challenge to the validity of the notice under Section 4 of the PP Act for the reason of the same not furnishing the grounds statutorily required to be furnished;
- J. that the judgment of the Division Bench of this Court in *Escorts Heart Institute and Research Centre Ltd. Vs. DDA* AIR 2008 Delhi 70 relied upon by the learned Single Judge has been stayed by the Supreme Court;
- K. that wherever there is a Government grant, the PP Act cannot apply;
- L. that the respondent No.1 ITDC by its conduct, express and implied allowed the appellant to raise construction of a permanent nature on the property and the said construction raised by the appellant itself cannot be public premises—such construction was raised after obtaining sanction from the DDA;

M. that the learned Single Judge erred in observing that para 87 of the judgment of the Supreme Court in ***Express Newspapers Pvt. Ltd. Vs. Union of India*** AIR 1986 872 is *per incuriam* in view of the Division Bench decision of this Court in LPA 976/2004 titled ***DDA Vs. M/s Ambitious Gold Nib Mfg. Co. Pvt Ltd.*** rendered on 21st February, 2006. It is contended that the Single Judge could not have held the judgment of the Supreme Court to be *per incuriam*;

N. that the action of the respondent No.1 are in breach of trust;

O. reliance is placed on paras 14,15 and 19 of ***Whirlpool Corporation Vs. Registrar of Trade Marks*** (1998) 8 SCC 1 laying down that availability of alternative remedy is not a bar to exercise of jurisdiction under Article 226 of the Constitution of India where the proceedings are wholly without jurisdiction or ultra vires of an Act.

5. Per contra, the counsel for the respondent No.1 ITDC has argued –

- (i) that all the points urged by the appellant before this Court can be urged before the Estate Officer;

- (ii) that the appellant before the learned Single Judge did not urge the invalidity of the notice under Section 4 of the PP Act as has been argued in this appeal;
- (iii) that be that as it may, the said aspect also can be urged before the Estate Officer;
- (iv) it is not as if the notice under Section 4 of the PP Act does not give the ground on the basis of which the Estate Officer has formed the opinion of the appellant being in unauthorized occupation – the said grounds are stated to be as per details attached and which details comprise of the application filed by the respondent No.1 ITDC before the respondent No. 2 Estate Officer and on the basis whereof the Estate Officer issued notice;
- (v) that the plea of the proceedings under the PP Act being not maintainable owing to the Guidelines aforesaid can also be taken before the Estate Officer;
- (vi) that the grounds on the basis of which the Estate Officer formed an opinion were incorporated in the notice under Section 4 of the PP Act by reference to the application of the respondent;

- (vii) that the Estate Officer if had not been satisfied with the reasons given in the application filed by the respondent No.1 before the Estate Officer could have rejected the said application;
- (viii) that the Estate Officer could not at that stage say anything more and if had done so would have been accused of pre-judging;
- (ix) that the sub-lease deed dated 19th February, 2002 itself in para 14 thereof provided that the provisions of the PP Act shall be applicable;
- (x) that continuation in occupation by any person after the authority, whether by way of grant or any other mode of transfer under which he was allowed to occupy the premises, expires or is determined is covered under Section 2(g) of the PP Act;
- xi) reference is made to the judgment dated 8th February, 2012 in WP(C) No. 11374/2006 titled ***Ocean Plastics & Fibres (P) Ltd. Vs. Delhi Development Authority*** of one of us (Justice Rajiv Sahai Endlaw) but which also was based on the judgment in ***Ambitious Gold Nib Pvt Ltd*** (supra);
- (xii) that ***Nulsi Neville Wadia*** expressly in para 24 held that effect of the Guidelines was not being finally determined in the said judgment.

6. The senior counsels for the appellant in rejoinder have contended –
- a. that the sub-lease dated 19th February, 2002 is not an ordinary lease and there is no termination clause therein;
 - b. that the application filed by the Public Authority before the Estate Officer cannot be a ‘ground’ within the meaning of Section 4(2)(a) of the PP Act which the Estate Officer is required to give in the notice;
 - c. that violation of Section 4(2)(a) is a jurisdictional fact;
 - d. reference is made to the Twentieth Report of the Standing Committee on Urban Development (2011-2012) presented to the Lok Sabha on 14th May, 2012 noticing that to prevent misuse of powers to evict genuine tenants from the public premises, the detailed Guidelines dated 30th May, 2002 had been issued and the satisfaction recorded by the Committee with the safeguards provided in the Guidelines;
 - e. reliance is placed on para 8 of *Dr. Yash Paul Gupta Vs. Dr. S.S. Anand* AIR 1980 J&K 16 where a Division Bench held the provisions of Section 4(2) of the PP Act to be mandatory;
 - f. that the lease in the present case is a manufacturing lease requiring six months notice of determination which has not been given;

g. that our earlier judgments on the aforesaid Guidelines holding the same to be not mandatory and not coming in the way of proceedings under the PP Act do not consider Section 3(b) of the Act and are thus *per incuriam*. Reference is made to ***Municipal Corporation of Delhi Vs. Gurnam Kaur*** (1989) 1 SCC 101 on *sub silent* decisions.

7. The counsel for the respondents has also argued that the appellant is an affluent tenant and in any case is not covered by the Guidelines and that the appellant took time before the Estate Officer to file reply to the notice and thereafter filed the writ petition from which this appeal arises and the writ petition was not maintainable on this ground alone.

8. We have considered the aforesaid rival submissions.

9. The challenge in the writ petition is to a notice under Section 4 of the PP Act. The respondent No.2 Estate Officer is still seized of the matter. The Supreme Court as far as back in ***Cooper Engineering Limited v. P.P. Mundhe*** (1975) 2 SCC 661 held that there is no justification for a party to stall the final adjudication of the dispute, in that case referred to the Industrial Adjudicator, by questioning the decision on preliminary issues before the High Court. Yet again in ***S.K. Verma Vs. Mahesh Chandra***

(1983) 4 SCC 214, practice of raising preliminary issues /objections to delay and defeat adjudication on merits was deprecated / disapproved of. Similarly in *D.P. Maheshwari v. Delhi Administration* (1983) 4 SCC 293 also it was held that all issues whether preliminary or otherwise should be decided together so as to rule out the possibility of any litigation at the interlocutory stage. The Supreme Court yet again in *National Council for Cement and Building Materials v. State of Haryana* (1996) 3 SCC 206 noticed the appalling situation created due to challenge to the decision on such preliminary issues in the High Court and during which time the reference is stayed and lies dormant and held that the High Court should refuse to intervene in the proceedings pending before the Industrial Adjudicator at an interlocutory stage.

10. The ratio of the aforesaid judgments would apply to the factual situation before us also, as the appellant, instead of contesting the notice issued under the PP Act before the respondent No.2 Estate Officer, has rushed to this Court, thereby stalling the proceedings before the respondent No.2 Estate Officer.

11. The challenge by the appellant has to be viewed in this light and all challenges which are maintainable before the Estate Officer cannot be subject matter of challenge at the threshold.

12. In our opinion the only challenge to the very maintainability of the proceedings before the Estate Officer can be on the grounds of –

- i. the parties having agreed to arbitration;
- ii. the proceedings before the Estate Officer being prohibited for the reasons of the Guidelines dated 30th May, 2002 (supra);
- iii. the lacuna if any in the notice under Section 4 of the Act.

13. As far as the challenge to the proceedings before the Estate Officer on the ground of the arbitration clause in the sub lease deed is concerned, not only is there a judgment of this Court in the Arbitration Petition preferred by the appellants and which is subject matter of SLP before the Supreme Court but we are also of the opinion that the arbitration clause having expressly excluded from its purview the matters to which the PP Act applies, whether the proceedings under the PP Act are maintainable or not, the same cannot be referred to arbitration on account of the parties having expressly agreed the same to be not arbitrable. Even if it were to be held that the said disputes owing to the judgment in *Express Newspaper* (supra) are not

maintainable before the PP Act, the same in any case are not arbitrable. We therefore do not deem it expedient to discuss the said matter any further.

14. As far as the challenge to the proceedings before the Estate Officer for the reason of the Guidelines dated 30th May, 2002 is concerned, the Division Bench of this Court in *Life Insurance Corporation of India Vs. Damyanti Verma* 188 (2012) DLT 741, *International Building & Furnishing Co. Pvt. Ltd. Vs. Life Insurance Corporation of India* MANU/DE/3398/2012, *Indian Institute of Public Opinion Pvt. Ltd. Vs. Life Insurance Corporation of India* MANU/DE/2031/2012, *S.S. Khera Vs. Punjab National Bank* MANU/DE/5361/2012, and *M/s. Pearey Lal & Sons Pvt. Ltd. Vs. Punjab National Bank* MANU/DE/3984/2012 has exhaustively dealt with the said aspect and has held that the Guidelines are no bar to the PP Act and the judgments and materials cited by the appellant have been considered in the said judgments and we thus do not feel the need to reiterate the reasons given in the aforesaid judgments. Suffice it is to observe that the clarification issued by the Central Govt. subsequent to the Guidelines on 23rd July, 2003 carves out an exception with respect to the affluent tenants and the appellant will certainly fall in that category.

15. The senior counsels for the appellant have cited only two new aspects qua the Guidelines i.e. Section 3(b) of the PP Act and the Report placed before the Lok Sabha.

16. As far as the Report is concerned, the same, in our opinion, would not make any difference being only a repetition of what the Guidelines themselves provide. The same even otherwise merely contains the observations/recommendations of the Standing Committee on Urban Development on the Public Premises (Eviction of Unauthorized Occupants) Amendment Bill, 2011 and the said bill being pending as on date, it is not appropriate to take any cognizance thereof. Reliance on Section 3(b) is misconceived. Section 3 is concerned with appointment of Estate Officers and while empowering the Central Government to, by notification in the Official Gazette, appoint such persons being Gazette Officers or Officers of the equivalent rank to be Estate Officers, also requires the Government to define the local limits within which or the categories of the public premises in respect of which the Estate Officer so appointed shall exercise the powers. The same is more in the nature of defining the territorial jurisdiction of the Estate officers and is not concerned with carving out any distinction between one set of public premises and another with one set being within the jurisdiction of the Estate

Officer and the other being not. Rather the Constitution Bench of the Supreme Court in *Ashoka Marketing Limited Vs. Punjab National Bank* AIR1991SC855 observed that the public premises are governed by the PP Act only and by no other legislation. We are thus not impressed with the challenge to the jurisdiction of the Estate Officer on the ground of the guidelines (supra).

17. That leaves the challenge to the notice under Section 4 of the PP Act. This Court as far back as in *Safari Airways Vs. The Estate Officer* AIR 1983 Delhi 347 held that the Estate Officer is not required to disclose to the noticee the material on which he has formed his opinion about the noticee's unauthorized occupation and the Estate Officer on the information so given to him by the owner can form his opinion. It was further held, (a) that the noticee has a right to contest the opinion formed by the Estate Officer in the course of hearing for which the show cause notice is given to him and the Estate Officer being a quasi judicial authority is bound to observe the principles of natural justice; (b) that the question of formation of opinion by the Estate Officer and the nature of the material before him loses all importance in view of the fact that the show cause notice gives a full opportunity to the occupant to dispute the opinion, the facts and allegation

against him, in the inquiry which follows the service of the notice; (c) that the noticee is not entitled to approach this Court under Article 226 to quash the notice or for that matter the proceedings themselves at their very threshold; (d) that the notice serves no other purpose than to set the machinery of law into motion and has no serious consequences because the noticee is heard before an order of eviction is made; (e) that the opinion of the Estate Officer cannot be challenged at this stage and is to be contested in the inquiry before the Estate Officer.

18. We respectfully concur with the judgment aforesaid of the Single Judge of this Court which we do not find to have been varied and has stood the test of time for the last more than 30 years.

19. We find the Supreme Court also in *Union of India Vs. Kunisetty Satyanarayana* AIR 2007 SC 906 to have reiterated that the reason why ordinarily a writ petition should not be entertained against a mere show cause notice is that at that stage the writ petition may be held to be premature – a mere show cause notice does not give rise to any cause of action because it does not amount to an adverse order which affects the rights of a party unless the same has been issued by a person having no jurisdiction to do so and because it is quite possible that after considering the

reply to the show cause notice or after holding an inquiry the authority concerned may drop the proceedings. It was held that a writ lies only when some right is infringed and a mere show cause notice does not infringe the right of any one and it is only when a final order adversely affecting a party is passed that the said party can be said to have any grievance. The Supreme Court held that the writ jurisdiction being discretionary should not ordinarily be exercised by quashing a show cause notice.

20. This Court in *Seasons Catering Services Pvt. Ltd. Vs. Delhi Development Authority* MANU/DE/8081/2007 applied the aforesaid principles to a notice under Section 4 of the PP Act and held that even if there is any deficiency in the notice it will be irrelevant, if the noticee is aware of the ground for eviction and has given a detailed reply on merits.

21. We find the facts here, to be identical.

22. We thus do not find any reason to interfere at this stage and do not find any merit in this appeal which is dismissed with costs of Rs.25000/- in favour of the respondent No.1 ITDC and payable within four weeks of today.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

APRIL 29, 2013/M