

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

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Date of decision: 4th September, 2014

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LPA No. 1299/2007

CEMENT CORPORATION OF INDIA LTD Appellant

Through: Mr. Rakesh Tiku, Sr. Adv with Mr.
Prakash Gautam and Ms. Shabana
Ahmed, Advs.

Versus

**LIFE INSURANCE CORPORATION OF
INDIA LTD. & ORS. Respondents**

Through: Mr. Kamal Mehta, Advs.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra court appeal impugns the judgment dated 14th September, 2007 of the learned Single Judge of this Court of dismissal of W.P.(C) No. 637/2005 preferred by the appellant. The said writ petition was preferred by the appellant impugning the order dated 20th November, 2004 of the Additional District Judge, Delhi, exercising the power as an Appellate Authority under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act), of dismissal of the appeal preferred by the appellant against the order dated

25th September, 2003 of the Estate Officer of the respondent no.1 Life Insurance Corporation of India (LIC) of eviction of the appellant from the first and second floors of property No.10, Darya Ganj, Delhi.

2. This appeal came up first on 1st November, 2007 when the counsel for the respondent LIC appearing on advance notice informed that the possession of the property from which the appellant had been ordered to be evicted, had already been taken over by the LIC. This Court vide the order of the said date, directed status *quo* as of that date to be maintained with regard to the possession of the property. Vide subsequent order dated 3rd March, 2009 the appeal was admitted for hearing but the application for interim relief filed by the appellant was dismissed. The order dated 29th April, 2013 in this appeal, without noticing that vide order dated 3rd March, 2009 the application of the appellant for interim relief had been dismissed, records that “the only question which remains for consideration is whether the papers and almirahs belonging to the appellant should be removed so that the respondent could utilise the premises for any other purpose.” The appellant was accordingly directed to inform as to whether the papers and almirahs had been removed or not. The appeal was, on 4th October, 2013, dismissed in default for non appearance of the appellant but on subsequent application of the appellant was restored.

3. We have heard the senior counsel for the appellant and the counsel for the respondents.

4. The counsel for the respondents informed that though the respondent LIC in pursuance to the order of eviction has taken possession, but the appellant has not removed its almirahs and the documents lying therein and thus the property is lying unused.

5. It is not understandable as to why the officials of the respondent LIC, inspite of dismissal on 3rd March, 2009 of the application for interim relief, not remove the almirahs and other articles of the appellant from the premises and so allowed the property to remain unused. It demonstrates a total lack of concern for public assets, of which such officials are trustees. The respondent LIC needs to introspect in this respect, to ensure that no such lapse occurs in future. The Chairman of the LIC is requested to take note and appropriate remedial measures.

6. The undisputed position is that one Asia Udyog Pvt. Ltd was the tenant of the respondent LIC in the said property as well as in property No.8 Darya Ganj, Delhi. However the said Asia Udyog Pvt. Ltd had sublet the property to M/s Dalmia Dadri Cement Ltd. Subsequently the undertaking of M/s Dalmia

Dadri Cement Ltd. with assets, including possession of the said two properties, was acquired by the appellant vide the Dalmia Dadri Cement Limited (Acquisition and Transfer of Undertakings) Act, 1981. Though Asia Udyog Pvt. Ltd was in the year 1978 ordered to be wound up and vide order dated 4th March, 1996 of the Company Judge of this Court in Company Application being C.A. No. 38/1995 in the winding up petition, the Official Liquidator was directed to hand over the possession of the said properties to the respondent LIC, save the portion in which the records of the Asia Udyog Pvt. Ltd. in liquidation were lying but the respondent LIC could not so take possession owing to the appellant being in occupation of the property.

7. The appellant claims that it started paying rent to the respondent LIC. The senior counsel for the appellant has drawn our attention to the letters dated 13th April, 1985, 21st September, 1989 and 1st September, 1994 exchanged by the appellant with the respondent LIC and which show that the respondent LIC had agreed to recognize the appellant as its direct tenant in the first and second floor of the property in 10, Darya Ganj, Delhi *inter alia* subject to the appellant surrendering possession of property No.8, Darya Ganj, Delhi and the respondent LIC had also agreed to execute lease deed with respect to property No.10, Darya Ganj, Delhi in favour of the appellant. The senior counsel for the

appellant has further drawn our attention to the document dated 6th September, 1994 whereby the appellant delivered possession of property No.8, Darya Ganj, Delhi to the respondent LIC and the respondent LIC accepted the same.

8. The only argument of the senior counsel for the appellant is that the respondent LIC having so agreed and having made the appellant deliver the possession of property No.8, Darya Ganj, Delhi to the respondent LIC, on the assurance that the appellant will be accepted as a tenant with respect to property No.10, Darya Ganj, Delhi, could not have, treating the appellant as an unauthorized occupant, sought eviction of the appellant therefrom.

9. Relying on para 38 of the judgement in ***Sudhir Goel Vs. M.C.D.*** AIR 2005 Delhi 7 it is also contended that the Estate Officer could not have decided the disputed questions of fact and law as were arising and the order of eviction of the appellant is liable to be set aside on this ground also.

10. Per contra, the counsel for the respondents has placed reliance on ***Ashoka Marketing Ltd. Vs. Punjab National Bank*** (1990) 4 SCC 406.

11. We had during the hearing enquired from the senior counsel for the appellant whether the appellant, upon the respondent LIC not abiding by its

agreement to execute lease deed in favour of the appellant with respect to property No.10, Darya Ganj, Delhi inspite of having made the appellant change its position by surrendering the possession of property No.8, Darya Ganj, Delhi, initiated any proceedings seeking specific performance of the agreement of grant of lease and if such an action was not taken, whether not the limitation prescribed for taking such action now stands lapsed. A mere agreement by the respondent LIC to grant lease of property No.10, Darya Ganj, Delhi in favour of the appellant would not create any right in favour of the appellant as a lessee. One of us (Rajiv Sahai Endlaw, J.) in ***Sunil Kapoor Vs. Himmat Singh*** 167 (2010) DLT 806 held that a mere agreement to sell of immovable property does not create any right in the property save the right to enforce the said agreement. It was thus held that even if the landlord is found to have agreed to sell the property to the tenant, the tenant would not get any right to occupy that property as an agreement purchaser. Reliance was placed on ***Jiwan Das Vs. Narain Dass*** AIR 1981 Delhi 291 laying down that in fact no rights enure to the agreement purchaser, not even after the passing of a decree for specific performance and till conveyance in accordance with law and in pursuance thereto is executed. It was further held that the tenant had no right to remain in occupation of the premises or to retain possession of the property merely

because of the agreement to sell in his favour. SLP(C) No.6010/2010 preferred against the said judgment was dismissed on 12th March, 2010. The same view has been followed by another learned Single Judge of this Court in *Shri Kasturi Lal Mehra Vs. M/s. Narshi Pharmaceutical & Surgical (P) Ltd.* MANU/DE/0443/2014. We are of the view that, what has been held in the judgments aforesaid with respect to an agreement to sell is also applicable to an agreement of grant of lease.

12. The senior counsel, while admitting that no action for specific performance was taken and that the limitation for taking such an action has expired, contended that the appellant could not have claimed the relief of specific performance by way of counter claim before the Estate Officer and for this reason only, the order of eviction of the appellant under the provisions of the PP Act is bad. It is in the said context that reliance was placed on *Sudhir Goel* (supra).

13. It is evident from the facts as narrated above that the possession of the appellant of the subject property was unauthorized and the appellant had no right to continue in possession. No doubt, the respondent LIC appears to have agreed to accept the appellant as a tenant and to grant lease in favour of the

appellant. The fact however remains that, the respondent LIC inspite of so agreeing, did not accept the appellant as a tenant and did not grant lease in favour of the appellant. The appellant could have sued for specific performance to enforce such an agreement on the respondent LIC, but did not. The appellant thus remained an unauthorized occupant of the property.

14. We are unable to agree that the Estate Officer had no jurisdiction owing to the facts aforesaid. One of us (Rajiv Sahai Endlaw, J.) in ***Ocean Plastics & Fibres (P) Ltd. Vs. Delhi Development Authority*** 187 (2012) DLT 359, on a conspectus of the case law in this respect and particularly relying on ***Ashoka Marketing Ltd.*** (supra) held that a writ petition 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 PP Act. LPA No.415/2012 preferred thereagainst was dismissed as withdrawn on 28th May, 2012. Another learned Single Judge of this Court in ***Ishmali Devi Vs. DDA*** MANU/DE/5242/2012 also held that though there is no requirement in the PP Act that the Estate Officer must be a person well-versed in law but that by itself cannot be a ground for excluding from the ambit of the said Act, disputes involving complicated questions of law and fact. We may however

mention that the same learned Single Judge in *DCM Limited Vs. Delhi Development Authority* MANU/DE/5127/2012 rejected the plaint in a suit, filed after the initiation of PP Act proceedings, for the relief of declaration of ownership, also holding that the said question could be raised before the Estate Officer. However, the said judgment was set aside in an appeal being RFA(OS) No.104/2012 decided on 19th March, 2013. The Division Bench though noticed *Ashoka Marketing Ltd.* (supra) but held that the dispute and complicated question in *Ashoka Marketing Ltd.* was whether the lease has been determined or not and in that context the Supreme Court had held that the Estate Officer was competent to adjudicate the same. The Division Bench further held that the same could not be a precedent where the person alleged to be in unauthorized possession was setting up a rival title in himself and had sought the declaration therefor. It was held that such a suit was maintainable and was not barred by the provisions of the PP Act.

15. As far as *Sudhir Goel* cited by the senior counsel for the appellant herein is concerned, “the complicated question of fact” entailed therein and which was held to be not capable of decision by the Estate Officer was relating to determination of lease only. The said view can no longer be said to be good law in view of *Ashoka Marketing Ltd.* (supra).

16. What follows from the judgment of the Division Bench of this Court in the appeal against *DCM Limited* (supra) is that the appellant could have very well filed the suit for specific performance of the agreement of grant of lease and which the appellant did not do. However, the same did not come in the way of the respondent LIC in instituting proceedings under the PP Act. The appellant having not availed its right, if any, has now missed the bus and cannot challenge the order of eviction under the PP Act on this ground.

17. Moreover, we may note that the findings of the Estate Officer have been upheld by the Appellate Authority i.e. the Additional District Judge as well as by the learned Single Judge. No ground for interference is made out.

18. We may record that the counsel for the appellant, much after we had reserved the order, has without any permission also filed copy of the judgment of the Supreme Court in *Delhi Administration Vs. Gurdip Singh Uban* 2000 Supp. (2) SCR 496. No reference thereto was made during the hearing. The counsel for the appellant has also not chosen to mention the matter to inform on which aspect reliance thereon is placed. We therefore ignore the same.

19. We are constrained to observe that the present appeal demonstrates a sad state of affairs. The appellant and the respondent both of which are Public Sector Undertakings have been litigating before this Court and continue to litigate even after the Prime Minister of the nation recently issued a statement against continuance of such litigations. Not only so, the continuance of this appeal for a period of nearly seven years, with neither of the two parties having been able to reap benefits from the use of the property, is most unfortunate.

20. Resultantly, while dismissing the appeal we impose cost of Rs. 20,000/- on the appellant, payable to the respondent.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

SEPTEMBER 4, 2014

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