

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 19.12.2014

+ **W.P.(C) 9051/2014 & CM No. 20663/2014**

BHARAT PETROLEUM CORPORATION LTD. Petitioner

versus

AIRPORT AUTHORITY OF INDIA & ANR Respondents

Advocates who appeared in this case:

For the Petitioner : Mr P. Sinha with Mr Avneesh Garg.

For the Respondents : Mr Digvijay Rai, St. Counsel for Airport
Authority of India/R-1.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

CAV 1122-1123/2014

The learned counsel for the respondent/caveator has entered appearance. The caveat stands discharged.

W.P.(C) 9051/2014

1. The petitioner impugns a common judgment and order dated 18.11.2014 (hereafter the 'impugned order') passed by the Airport Appellate Tribunal, New Delhi (hereafter the 'Tribunal') in Appeals Nos. 4/CP/AAT/2013 and 5/CP/AAT/2013.

2. The said appeals were in turn filed against separate orders dated 29.07.2013 passed by the Eviction Officer under Section 28D of the

Airports Authority of India Act, 1994 (hereafter the ‘Act’) in Case No. 1/2012/38 and 3/2012/37, *inter alia*, directing the petitioner to handover peaceful possession of the premises comprising of an area measuring 1672.20 sq. meters, opposite Centaur Hotel, Near Cargo Terminal, Terminal-2, IGI Airport, New Delhi and an area measuring 1150 sq. meters at Terminal 1-B, IGI Airport, New Delhi (hereafter collectively referred to as “the said premises”).

3. According to the petitioner, the Eviction Officer did not have the jurisdiction to pass an order for eviction under Section 28D the Act, as it is contended that the Airport Authority of India (hereafter ‘AAI’) could not have instituted the proceedings for eviction of the petitioner as it had entered into an Operation Management and Development Agreement (hereafter ‘OMDA’) with Delhi International Airport Pvt. Ltd. (hereafter ‘DIAL’) with respect to the IGI Airport. It is further contended that the petitioner was not an unauthorized occupant of the said premises.

4. It is also urged that the said premises were not “airport premises” within the meaning of Section 28A(a) of the Act.

5. The principal contention urged before the Tribunal was that AAI had ceased to have any locus to institute the proceedings for eviction of the petitioner from the said premises as it had, in terms of OMDA, executed a lease for lands and buildings of the IGI Airport, including the said premises, in favour of DIAL.

6. It is not necessary to recount the history as to how the petitioner came into occupation of the said premises. However, it is admitted that the

petitioner was granted leases in respect of the said premises by AAI which have since expired.

7. The petitioner claims that it was granted a lease of the said premises by AAI which expired on 31.03.2006. According to AAI, it had granted a license and not a lease. There are also certain disputes regarding arrears of rent for which proceedings are pending. However, it is not necessary to go into such disputes as they are not relevant to the point in issue.

8. The petitioner was served with a notice dated 10/16.08.2011 by AAI calling upon petitioner to vacate the said premises. DIAL had also served a notice to the petitioner for vacating the said premises. In addition, DIAL had also approached AAI, calling upon AAI to take steps to vacate and handover the said premises to DIAL.

9. The controversy raised in the present petition is to be addressed in the backdrop of the aforesaid facts. The principal controversy to be addressed is whether the eviction proceedings before the “Eviction Officer” were without jurisdiction since it were commenced at the instance of AAI.

10. The procedure for eviction of unauthorized occupants is contained in Chapter VA of the Act. Section 28B of the Act provides for appointment of Eviction Officers and for defining the local limits within which, or the categories of airport premises in respect of which, the said officers shall exercise their jurisdiction. Section 28C of the Act provides for issuance of show cause notice and Section 28D of the Act provides for eviction of unauthorized occupants. Sections 28C and 28D of the Act are relevant and are quoted below:-

“28C. Issue of notice to show cause against order of eviction.-(1) If the eviction officer is of the opinion that any persons are in unauthorised occupation of any airport premises and that they should be evicted, the eviction officer shall, in the manner hereinafter provided, issue a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall-

- (a) specify the grounds on which the order of eviction is proposed to be made; and
- (b) require all persons concerned, that is to say, all persons who are or may be, in occupation of, or claim interest in, the airport premises-
 - (i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than seven days from the date of issue thereof, and
 - (ii) to appear before the eviction officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown and also for personal hearing, if such hearing is desired.

(3) The eviction officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the airport premises and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to the persons concerned.

(4) Where the eviction officer knows or has reasons to believe that any person is in occupation of the airport premises, then, without prejudice to the provisions of sub-section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed.

28D. Eviction of unauthorised occupants.-(1) If, after considering the cause, if any, shown by any person in

pursuance of a notice under section 28C and any evidence produced by him in support of the same and after personal hearing, if any, given under sub-clause (ii) of clause (b) of sub-section (2) of section 28C, the eviction officer is satisfied that the airport premises are in unauthorised occupation, the eviction officer may make an order of eviction, for reasons to be recorded therein, directing that the airport premises shall be vacated, on such date as may be specified in the order, by the persons who may be in occupation thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the airport premises.

(2) If any person refuses or fails to comply with the order of eviction on or before the date specified in the order or within fifteen days of the date of publication under sub-section (1), whichever is earlier, the eviction officer or any other officer duly authorised by the eviction officer in this behalf may, after the date so specified or after the expiry of the period aforesaid, whichever is earlier, evict that person from, and take possession of, the airport premises and may, for that purpose, use such force as may be necessary.

11. It is apparent from the scheme of Chapter VA of the Act that the question of initiation of complaint is not relevant as the proceedings are not driven by the person who brings the factum of unauthorized occupation to the notice of the Eviction Officer. Thus, it is not material whether the proceedings were initiated by AAI or by DIAL. The Act enjoins that an Eviction Officer has the jurisdiction to commence proceedings for eviction of an unauthorized occupant if it is of the opinion that any person is in “*unauthorized occupation of any airport premises*”. The *locus standi* of AAI for causing proceedings to be initiated under the Act has to be viewed in the context of the scheme of the Act. Indisputably, AAI is the owner of the said premises. Although AAI has executed a lease in favour of DIAL, it

is necessary to bear in mind that DIAL is a joint venture, which includes AAI as one of its constituents and was formed to carry on some of the functions which were entrusted to AAI under the Act. In the circumstances, the locus of AAI to ensure that unauthorized occupants are evicted from the Airport premises cannot be called into question. The Eviction Officer is entrusted with the function to initiate and undertake proceedings for eviction of unauthorized persons under the Act and given the scheme of Chapter VA of the Act, the Eviction Officer is bound to discharge its function on being made aware of an unauthorized occupation of the airport premises.

12. Under the scheme of Chapter VA of the Act, the Eviction Officer has to form an opinion whether any person is in unauthorized occupation of the airport premises and thereafter proceed under the Act.

13. AAI is constituted under section 3 of the Act. The preamble of the Act indicates that it is an *“Act to provide for the constitution of the Airports Authority of India and for the transfer and vesting of the undertakings of the International Airports Authority of India and the National Airports Authority to and in the Airports Authority of India so constituted for the better administration and cohesive management of airports and civil enclaves whereat air transport services are operated or are intended to be operated and of all aeronautical communication stations for the purpose of establishing or assisting in the establishment of airports and for matters connected therewith or incidental thereto.”* It is relevant to note that the preamble of the Act was amended by the Airport Authority of India (Amendment) Act, 2003 with effect from 01.07.2003 to include the words

“for the purpose of establishing or assisting in the establishment of airports”. The said amending Act also introduced Chapter VA and Section 12A, in the Act. Whilst Chapter VA of the Act contains special provisions for eviction of unauthorized occupants of airport premises, Section 12 A of the Act enables AAI to lease the premises of an airport for its better management. Clearly, the conjoint reading of the provisions of the Act indicates that the legislative intent is to, *inter alia*, provide a legislative framework for better management of airports. There is nothing in the Act that indicates that this intent is diluted in any manner, in the event premises of an airport are leased to carry out some of the functions under Section 12 of the Act. The mechanism of Chapter VA of the Act is equally applicable to airports, whether the same are leased by AAI or managed entirely by AAI. In this perspective, the challenge laid by the petitioner on the jurisdiction of the Eviction Officer or the locus of AAI to cause the Eviction Officer to initiate proceedings under the Act, is devoid of any merit.

14. The next contention urged by the petitioner is that with the execution of a lease deed in favour of DIAL, the said premises had ceased to be *“airport premises”* within the meaning of Section 28A of the Act. Clause (a) of Section 28A of the Act defines ‘Airport Premises’ and reads as under:-

“(a) “airport premises” means any premises,-

(i) belonging to airport;

(ii) taken on lease for the purposes of airport;

(iii) acquired for the Authority under the provisions of the Land Acquisition Act, 1894 (1 of 1894) or any other corresponding law for the time being in force.

Explanation.-For the removal of doubts, it is hereby declared that for the purposes of this clause, airport includes private airport;”

15. Plainly, the definition of airport premises is very wide and would include any premises belonging to an airport. Undoubtedly, the said premises were put in the control of AAI as a part of the IGI Airport at Delhi. The fact that AAI has entered into a lease with respect to certain premises in terms of Section 12A of the Act for better management of the airport would not result in the said premises ceasing to be a part of the airport premises.

16. The petitioner has contended that any land leased by AAI to a private entity would cease to be airport premises unless it is taken on lease for the purposes of airport as contemplated under Section 28A(a)(ii) of the Act. According to the petitioner, the said premises are not a part of the lease which is taken for the purposes of airport, as defined under Section 2(b) of the Act but for other purposes. I am unable to accept this contention. First of all, for the reason that concededly, the lease entered into between AAI and DIAL is in terms of Section 12A of the Act, which enables AAI to “make a lease of the premises of an airport (including buildings and structures thereon and appertaining thereto) to carry out some of its functions under section 12 as the Authority may deem fit:”. It is not disputed that OMDA was entered into between AAI and DIAL in terms of Section 12A(1) of the Act. This also indicates that the premises leased to

DIAL were “premises of an airport” and thus, also falls within the definition of airport premises.

17. Secondly the definition of “airport premises” includes any premises “*belonging to airport*”. The expression “belonging to airport” cannot be construed narrowly to include only the landing and taking off area but also includes all other appurtenant areas used to provide facilities at the airport such as parking lots etc. The expression “belonging to airport” cannot be read as “constituting an airport”.

18. Thirdly, the said premises have been described as being located at “IGI Airport” and “at Delhi Airport” in documents relied upon by the petitioner and it is not open for the petitioner to now contend that the said premises do not belong to the airport.

19. The petitioner submits that it is the month to month tenant of DIAL and, therefore, not an unauthorized occupant. However, the learned counsel does not dispute that DIAL has called upon the petitioner to vacate the said premises. Thus, it cannot be disputed that the petitioner’s continued occupation of the said premises is without authority either from AAI or DIAL.

20. It is also relevant to note that even though the petitioner claims to be a tenant of DIAL and seeks to derive its interest through DIAL, yet it has not made DIAL a party to this petition. The reason for the same is obvious; DIAL had also called upon the petitioner to vacate the said premises and also requested AAI to hand over vacant possession of the said premises.

21. In view of the above, I find no reason to interfere with the impugned order. Accordingly, the petition and pending application are dismissed. No order as to costs.

VIBHU BAKHRU, J

DECEMBER 19, 2014
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