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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1089 of 2015

Prahlad Tiwari S/o Late Dwarika Nath Tiwari Aged About 75 Years R/o MIG-6, Padmanabhpur, Durg, Tahsil & Distt. Durg (Chhattisgarh), Civil & Revenue Distt. Durg (Chhattisgarh)

---- Petitioner

Versus

1. Steel Authority Of India Limited Bhilai Steel Plant, Town Services Department, Through- Its General Manager, Bhilai Steel Plant, Bhilai, Distt. Durg (Chhattisgarh)
2. The Senior Manager Town Services Department (Shop Section), Bhilai, Distt. Durg (Chhattisgarh)

---- Respondents

Shri B.P.Sharma, counsel for the petitioner/s.

Dr. Saurabh Pandey, counsel for the respondents.

C A V Order

20/08/2015

Heard on objection with regard to the maintainability of the petition.

When the writ petition was heard on admission, an objection with regard to maintainability of the petition was raised by learned counsel for the respondent submitting that it being a contractual matter, involving a simple contractual dispute, involving disputed question of facts, the petition is not maintainable.

2. Learned counsel for the parties were heard at length on the issue of maintainability of the petition.

3. The petitioner has filed this petition under Article 226 of the Constitution of India praying for quashing of order dated 01/06/15 issued by the respondent by which petitioner's lease has been cancelled. The impugned letter, as it reads, states that as the petitioner has failed to comply with the instructions

in the letter referred to therein, his lease is terminated and allotment cancelled. The ground stated in the letter is -

Non-payment of 'lease renewal charges' and fresh 'security deposit' in relation to 'renewal of lease' of the plot shop in question for 2^{nd} span of 30 years.

4. Learned counsel for the petitioner argued that the petitioner was granted 30 years of lease and when occasion arose for renewal of lease, the respondents, in utter violation of the terms contained in Clause 5 (1) of the lease deed (Annexure P/2), demanded high amount of premium and rent as condition for renewal of lease. It is contended that this action of the respondents apart from being violative of express conditions of lease is otherwise arbitrary and unreasonable. Contention of learned counsel for the petitioner is that the respondent being a 'State' under Article 12 of the Constitution of India, even in contractual matters, is required to act in fair and reasonable manner free from vice of arbitrariness. Therefore, it is urged, writ petition under Article 226 of the Constitution of India would be maintainable.

5. Raising objection to the very maintainability of the petition, learned counsel for the respondent argued that though the petitioner was granted lease for thirty years, per force express stipulations contained in Clause 5 (6) of the lease, the terms and conditions of grant of further lease in respect of the demised land for a further period of thirty years are to be unilaterally decided by the lesser only. According to him, this express condition of lease in unequivocal terms, stipulates that the terms and conditions of renewal are to be unilaterally decided by the lesser only. It is then submitted that Clause 5(1) of the lease relates only to rent in contradistinction to terms and conditions of lease which may be prescribed by the lesser at the time of renewal. The respondent has laid down detailed and uniform policy with regard to terms and conditions in the matter of renewal of lease vide Board's resolution passed in its 340^{th} meeting dated 21/07/08 wherein a concessional rate equivalent to 25% of the applicable land rate (current market rate) is to be charged for renewal of lease. Referring to the provisions contained in Section 105 of the Transfer of Property Act, 1882, it has been argued that the

lease of 30 years having already come to an end, lease expired on 29/09/12. The petitioner having applied for renewal, he was informed vide letter dated 31/12/13 to deposit the premium amount as lease renewal charges along with security deposit of Rs.1,20,000/- for executing a fresh lease for a further period of 30 years followed by reminder notices dated 19/12/14 and 06/05/15. When the petitioner did not comply with the terms and conditions of renewal as laid down by the Board, the respondent had no option but to issue impugned letter dated 01/06/15. He submits that there is no arbitrariness and the dispute is purely contractual in nature requiring interpretation of various terms of the agreement on the basis of intention of the parties which have to be gathered by oral evidence in that regard. In the absence of there being any vice of arbitrariness reflected in the action of the respondents, the present case is only qua terms and conditions of contract. The petitioner has alternative remedy of taking recourse to filing of suit.

6. The nature of dispute which has arisen between the parties, as reflected from their respective pleadings and documents on record, involves interpretation of various clauses of contract. While petitioners contention has been that terms of renewal of lease are inextricably controlled by the provisions contained in Clause 5 (1) of the lease deed, the respondent's contention seems to be primarily based on plain reading of clause 5 (6) of the lease deed. It is found that terms and conditions in the matter of renewal of lease laid down by the respondent under a policy decision in Director's meeting, is stated to be of uniform application in all matters relating to renewal of lease. The premium amount for renewal of lease has been fixed at the concessional rate of 25% of the present market land rate.

It is not the case of the petitioner nor borne out from the pleadings or documents that in the matter of demand of premium and security deposit, different yardsticks are being applied in respect of similarly situated lessees on any pick and choose basis so as to prima facie make out a case of hostile discrimination.

Nor is it a case, prima facie made out from the pleadings in the writ petition, that prescriptions of premium and security deposit are in violation of any statutory provisions governing terms and conditions of lease or police laid down by the Government itself in the matter of its application to public sector undertakings.

7. In the aforesaid conspectus of the facts and circumstances, it cannot be said that the action of respondents is so patently arbitrary or outrageous or in defiance of logic and reasons as to hold that it requires examination of dispute under public law domain. The present case appears to be an ordinary contractual dispute qua terms and conditions of contract involving no issue arising for consideration in public law domain. Moreover, in the present case, the examination would necessarily involve intention of the parties also which can be gathered from oral evidence along with the terms and conditions thus requiring adducing of oral evidence by respective parties before a decision can be taken either way. I do not find any material on record to prima facie indicate a malafide or high handed action only with an oblique motive to somehow evict the petitioner. During the course of arguments, learned counsel for the petitioner could not make out a prima facie case of violation *per se* of any of the express terms and conditions of the lease deed or policy decision taken by the respondents in the matter of renewal of lease. It, therefore, cannot be categorized as a case where the issue could be decided without making enquiry into disputed issues of fact. The rights of the parties requiring determination, are claimed to arise only under the terms of the contract. That means that what petitioner seeks to enforce through this writ petition is a right qua contract and not a grievance arising on account of any malafide or arbitrary decision. Merely because, one of the contracting party happens to be the 'State' under Article 12 of the Constitution of India, it cannot be laid down as an invariable rule of application that in all such cases, the writ petition would be maintainable. In the absence of issues arising under public law consideration, it is the discretion of the writ court not to invoke jurisdiction under Article 226 of the Constitution of India, in the facts and circumstances of each case. The principles applicable in the matter of exercise of discretionary jurisdiction by the writ court in contractual matters have been succinctly laid down by the Supreme Court in plethora of decisions. Upon survey of long list of decisions, in the case of **Life Insurance Corporation of India v. Escorts Ltd. And others, (1986) 1 SCC 264,** the

Supreme Court held as below -

> "**102.** For example, if the action of the State is political or sovereign in character, the court will keep away from it. The court will not debate academic matters or concern itself with the intricacies of trade and commerce. If the action of the State is related to contractual obligations or obligations arising out of the tort, the court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the line with precision and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances. When the State or an instrumentality of the State ventures into the corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholder. There is no reason why the State as a shareholder should be expected to state its reasons when it seeks to change the management, by a resolution of the company, like any other shareholder."

8. In the case of **Kisan Sahkari Chini Mills Ltd. and Ors. Vs. Vardan Linkers and Ors., (2008) 12 SCC 500,** while entertaining challenge to order passed by the authorities staying operation of allotment letter and subsequent cancellation of allotment, the Supreme Court observed :

> "**18**. Ordinarily, the remedy available for a party complaining of breach of contract lies for seeking damages. He will be entitled to the relief of specific performance, if the contract is capable of being specifically enforced in law. The remedies for a breach

> of contract being purely in the realm of contract are dealt with by civil courts. The public law remedy, by way of a writ petition under Article 226 of the Constitution of India, is not available to seek damages for breach of contract or specific performance of contract. However, where the contractual dispute has a public law element, the power of judicial review under Article 226 of the Constitution of India may be invoked."

The scope of interference in a writ petition arising out of a contractual dispute was explained as below :

> "**23.** If the dispute was considered as purely one relating to existence of an agreement, that is, whether there was a concluded contract and whether the cancellation and consequential non-supply amounted to breach of such contract, the first respondent ought to have approached the civil court for damages. On the other hand, when a writ petition was filed in regard to the said contractual dispute, the issue was whether the Secretary (Sugar), had acted arbitrarily or unreasonably in staying the operation of the allotment letter dated 26-3-2004 or subsequently cancelling the allotment letter. In a civil suit, the emphasis is on the contractual right. In a writ petition, the focus shifts to the exercise of power by the authority, that is, whether the order of cancellation dated 24-4-2004 passed by the Secretary (Sugar), was arbitrary or unreasonable. The issue whether there was a concluded contract and breach thereof becomes secondary. In exercising writ jurisdiction, if the High Court found that the exercise of power in passing an order of cancellation was not arbitrary and unreasonable, it should normally desist from giving any finding on disputed or complicated questions of fact as to whether there was a contract, and relegate the petitioner to the remedy of a civil suit. Even in cases where the High Court finds that there is a valid contract, if the impugned administrative action by which the contract is cancelled, is not unreasonable or arbitrary, it should still refuse to interfere with the same, leaving the aggrieved party to work out his remedies in a civil court. In

> other words, when there is a contractual dispute with a public law element, and a party chooses the public law remedy by way of a writ petition instead of a private law remedy of a suit, he will not get a full-fledged adjudication of his contractual rights, but only a judicial review of the administrative action.”....

9. As an upshot of above consideration, this Court is not inclined to entertain the dispute and leaves the parties to work out their remedy by approaching Civil Court for seeking appropriate relief as may be available to them under the law.

10. Considering, however, that the petitioner has been in possession of the demised land for more than 33 years and he claims to carry out his work as a lawyer / notary, it is directed that for a period of 60 days from today, he shall not be evicted by the respondents. Thereafter, it would be open for the respondents to seek eviction in accordance with law. It is also clarified that this order shall not come in the way of the parties to resolve disputes under any amicable settlement.

11. With the aforesaid limited protection and clarification, this petition is finally disposed off.

Sd/-

Manindra Mohan Shrivastava
Judge

Deepti