

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10676 OF 2011

M/s. Punjab Chemicals & Crop Protection Ltd. .. Petitioner

-Versus-

Hindustan Antibiotics Limited and Ors. ..Respondents

Mr. Mayuresh Kulkarni with Ketan Chothani for petitioner
None for respondents.

CORAM : G.S.KULKARNI, J.

DATE : 23rd August 2016.

P.C.

1. This petition under Article 227 of the Constitution of India, assails the judgment and order dated 1st November 2011 passed by the learned District Judge, Pune, whereby the appeal of the petitioner under section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short the Public Premises Act) has been rejected, confirming an eviction order.

2. The petitioner claims to be the successor of one M/s.Excel Phospho Chemicals (Excel for short), which according to the petitioner came to be amalgamated in proceedings in Company Petition No.533 of 2005 under an order dated 28th October, 2008 between one STS

Chemicals and the Petitioner herein. The order passed by the High Court and the amalgamation scheme is placed on record in the paper book of this petition.

3. The respondent No.1 Hindustan Antibiotics Ltd., (for short Respondent) is a Government Company. There is no dispute that the premises in question belonging to the respondent are public premises within the purview of the Public Premises Act. Excel was granted on lease an open plot of land by respondent No.1 under a lease agreement dated 12th November 1960. The period of lease as specified under the agreement was from 1st November 1961 to 31st December 1985 at the rate of Rs.250 per month per acre. There is no dispute that this lease agreement was duly registered. It would be fruitful to note some of the contents of this lease agreement, which are as under:-

- i) The agreement specifically describes "lessees" (Excel) as *"which expression wherever the context so requires or admits of meaning and include them and the partner or partners for the time being in the said business and survivor or survivors and their heirs, executors or administrators of such survivors **or their assigns.**"*
- ii) Lessees (Excel) requested the lessors (Respondent) to grant lease of land for the purpose of setting up ancillary industrial units.

iii) The agreement was to hold the premises by lessees for a period of 25 years commencing from 1/1/1961 and ending on 31/12/1985 for a rent of Rs.250/- p.m. per acre.

iv) The schedule of properties in the agreement does not give description of any structures on the plot of land.

v) It was permissible for the lessees to construct super structures, compound wall, enclosures extensions to the factory buildings as necessary at the cost of the lessees.

vi) At the expiration or sooner determination of the term of the lease till vacant possession to the lessors, the lessees were entitled to remove the building and fixtures and fittings constructed or installed by the lessees provided that in the event of failure to vacate the site by the lessees, the lessors shall have the right to remove or cause to be removed all the machineries and other appurtenances at the cost and risk of the lessees.

vii) In the event of vacating of the site by the lessee on their own accord or under any of the clauses in the agreement, the land was to be restored to its original form and condition by the lessees, failing which the lessors shall have a right to do so at the cost and risk of the lessees and to recover lease money at the rate applicable under the agreement until the land has been so restored.

viii) The lessees shall not part with or in any form mortgage, assign, sub-lease or sub-let whole or in part thereof of the land leased out to them by the lessors

without the previous consent in writing from the lessors and no arrangement made by the lessees without such prior concurrence shall be binding on the lessors.

4. The case of the petitioner is that after expiry of the above lease period a supplementary agreement dated 30th July 1988 came to be executed between M/s. Excel and respondent No.1 whereby the lease which had expired on 31st December 1985 was agreed to be extended for a further period of 25 years to expire on 31st December 2010. This supplementary agreement is not a registered document. It appears that Excel was also in arrears of rent. This is clear from the letter dated 1st August 1988 addressed by respondent No.1 to M/s. Excel.

5. It is the petitioners case that during occupation of the premises by Excel under the supplementary agreement, by virtue of the scheme of amalgamation, as noted above, with effect from 2005 the petitioner is in enjoyment of the said premises as succeeding the interest of Excel. However there is nothing on record as placed by the petitioner before the learned District Judge that any attempt was made by the petitioner to inform the Respondent of any such amalgamation or for that matter to formally get the lease transferred in favour of the petitioner.

6. As noted above the schedule of properties in the agreement does not provide for description of any structures. A perusal of both the agreements reveal that the lease pertained only to the “land” in question belonging to the Respondent Government Company. There is no material which would show that the occupation of the petitioner of the premise was in any manner authorized by the Respondent after 31st December, 2010.

7. On this background the Estate Officer appointed under the Public Premises Act issued a notice under section 4(1) of the Act dated 29th March 2011 calling upon Excel to appear before him and show cause as to why an order of eviction should not be passed against Excel. The grounds set out in the show cause notice read thus:-

“You are in possession of one acre land (43,560 sq.ft) being plot No.2 out of Revenue Survey No.202 at Pimpri, Waghire. The owner of the said premise is Hindustan Antibiotics Ltd. (HAL) i.e. complainant company (CC).

The supplementary lease agreement was executed between HAL and Excel Phospho Chemicals on 30th July 1988 for the period of 25 years from 1st January 1986 to 31st December 2010 (said agreement was notarized). The said supplementary agreement was executed on same terms and conditions contained in the registered deed of lease 5th October 1966 except the option period of renewal and quantum of rent.

As per the said supplementary agreement the validity of lease agreement expired on 31st December 2010. You

have not vacated the premises as per the terms and conditions of the agreement.

Vide letter No.CSA/Admin/Excel Phospho/2010-11 dated 4th February 2011, HAL, Pimpri, Pune has requested you to deliver the vacant possession of the said premises immediately as per the terms and conditions of lease agreement dated 5th January 1966. But you have not replied to letter and not handed over the possession of premises.

Now, therefore, in pursuance of sub-section (1) of section 4 of the Act, I hereby call upon you to show cause on or before 11th April 2011 why such an order of eviction should not be made.”

The description of the property was appropriately set out by the estate officer in the Section 4(1) notice.

8. In pursuance to the above show cause notice, Excel through its Vice President submitted its reply under a letter dated 14th April 2011, inter alia setting out its defence which is as under :-

“1. that the said premises were given to us by your office as per lease agreement 5/1/1966 and handed over the possession of the same by your office and was not as an unauthorised occupation and possession of the same as alleged by you.

2. That after receipt of possession of the said premises we have made construction thereon and we have been in possession of the same with us for last so many years;

3. We say that in view of our continued possession and enjoyment of the premises the same are

required for us and will not be able to deliver the possession of the same to you;

4. We say that the agreement for the period 1/1/1961 to 31/12/1985 has completed its period and, thereafter, the said agreement was not registered as per the provisions of law, therefore, you are not entitled to take the possession of the same;

Further Excel through its representative also appeared before the Estate Officer for personal hearing on 15th April 2011.

9. It appears that though Excel submitted its reply dated 14th April, 2011 to the notice under Section 4(1) of the Public Premises Act as also the representative of Excel was heard on 15th April, 2011, however despite sufficient opportunity being granted Excel thereafter failed to appear before the Estate Officer. Excel was also informed that if it fails to appear, the Estate Officer would proceed ex parte. The Estate Officer, thereafter, proceeded to pass an order of eviction dated 22nd June, 2011 against Excel under section 5(1) of the Act. The Estate Officer has recorded a finding that the occupation of Excel was unauthorized taking into consideration the expiry of the first lease agreement as also expiry of the period under the supplementary lease agreement and that there was no renewal option provided in the supplementary agreement. It was also recorded that the supplementary agreement was not registered

and even otherwise, there was no legal right whatsoever for M/s. Excel to continue to occupy the premises in question rendering the occupation to be unauthorised.

10. The petitioner approached the court of learned District Judge, Pune by filing an appeal under section 9 of the Act, assailing the eviction order dated 22 June 2011 passed by the Estate Officer. Petitioner in assailing the eviction order, inter alia, urged three basic grounds which are also the submissions on behalf of petitioners in the present petition. Firstly, that there was no opportunity given to the petitioner before the Estate Officer. Secondly, the order is passed against the non existent entity (Excel) as by virtue of amalgamation order, Excel's interest stood vested in the Petitioner and thirdly that in any event the petitioners enjoyed the status of monthly tenants under the Maharashtra Rent Control Act, 1999 and, therefore, the proceedings under the Public Premises Act could not have been initiated against the petitioners.

11. By the impugned judgment and order the learned District Judge, after taking into consideration all the facts and issues which were raised in the appeal did not find any merit in the grounds of challenge, to the eviction order, as urged on behalf of the petitioners and accordingly

dismissed the appeal with a direction that the petitioners shall handover vacant and peaceful possession of the premises to the respondent. The petitioners have accordingly approached this court challenging the said judgement and order passed by the learned District Judge.

12. In assailing the impugned order, the learned Counsel for the petitioner has reiterated the submissions as noted above to firstly contend that Excel was not granted an opportunity of a hearing by the Estate Officer. Secondly, that the Estate Officer could not have proceeded to pass an order against a non existent entity namely Excel as by virtue of the amalgamation according to the petitioners Excel was no more in existence. Thirdly, under the Maharashtra Rent Control Act, 1999 (for short "the Rent Act), the petitioner had acquired a status of a tenant and proceedings were required to be adopted against the petitioners under the Rent Act and, thus action for eviction under the provisions of Public Premises Act could not have been taken against the Petitioners.

13. I have heard the learned Counsel for the petitioner. I have also perused the impugned order as also the documents which are placed on record. As regards the first submission that Excel was not granted

opportunity of a hearing by the Estate Officer, in my opinion this contention cannot be accepted and has been rightly rejected by the learned District Judge. This is for the reason that at the hearing held on 15th April 2011 before the Estate Officer, the representative-Vice President of Excel appeared before the Estate Officer in response to the show cause notice as also written reply of Excel dated 14th April 2011 was submitted to the Estate Officer. The reply sets out the defence of Excel as reproduced above. No other plea was taken, nor the issue that Excel stood amalgamated with the petitioner company was urged. Despite this reply opportunity was granted to Excel to appear before the Estate Officer and to defend the proceedings. All these facts clearly indicate that the petitioner was well aware about the eviction proceedings. Moreover when on 15th April 2011 the Vice President of Excel appeared before the Estate Officer and had put in his defence, this was admittedly after the amalgamation in 2005 as petitioner itself shows. Further a perusal of the reply to the show cause notice as submitted by Excel makes out no ground to justify that Excel/Petitioner is in an authorized occupation of the premises. Therefore, there is nothing wrong if on this background and considering the defence of Excel, the Estate Officer proceeded to pass final orders dated 22nd June 2011 directing eviction of petitioners under the provisions of section

5(1) of the Public Premises Act. A perusal of the eviction order clearly indicates that the contentions of the respective parties are considered and detailed findings thereon are recorded, to come to a conclusion of unauthorized occupation and an eviction thereof, while passing the order. Considering this position, there is no substance in the contention as urged on behalf of the petitioner that the orders of the Estate Officer are passed without granting an opportunity to the petitioners. In any case the Petitioner has no independent interest from that of Excel as the Petitioner claims to have inherited the interest of Excel and can claim no independent say. This position is also clear from clause 5 of the lease agreement dated 12 November, 1960 which reads thus:

“5. The lessees shall not part with or in any form mortgage, assign, sub-lease or sub-let whole or in part thereof of the land leased out to them by the lessors without the previous consent in writing from the lessors and no arrangement made by the lessees without such prior concurrence shall be binding on the lessors.”

14. As regards the second contention that the order of the Estate Officer against Excel was passed against a non existent entity, it may at the outset be observed that such a plea was never raised in defence before the Estate officer. This is clear from perusal of the reply to the show cause notice before the Estate Officer. It is also quite clear that the

Vice President of Excel who was aware about the orders of amalgamation never thought it appropriate to put forth the plea to that effect. Infact the reply to the show cause notice itself is submitted by Excel, as signed by the Vice President. The submission of the petitioners is thus wholly contradictory to the position on record. There is no dispute that the Estate Office had served a show cause under Section 4 (1) on Excel, which also came to be replied, however without any justification to show that the possession of Excel was lawful. It is also not the case of the petitioner that they had approached the respondent No.1 for any modification of supplementary agreement after the order of amalgamation was passed if at all Excel was of the opinion that it had become non existant. On this background the matter proceeded before the Estate Officer. Thus in my opinion the submission that the Estate Officer has passed an eviction order against a non existent entity is completely misconceived, unteneable and an afterthought. In any case, apart from the petitioner's not canvassing this position before the Estate Officer, the eviction order cannot be rendered to be illegal on this count inasmuch as the order against Excel and any liability created thereunder would be the liability or an obligation of the petitioner company as it is the petitioner's case that it is the assignee of Excel. There is no dispute that the petitioner is enjoying the premises as leased to Excel which

itself has expired on 31st December, 2010. There is no material to show that the petitioner was permitted and/ or authorized to use the land by the Respondents. This position is not and cannot be disputed by the petitioners. The learned District Judge has appropriately appreciated this plea, and in my opinion has rightly recorded a finding of fact in this behalf, that the occupation of the premises by the petitioner was unauthorized as held by the Estate Officer. This finding of fact based on documentary evidence as placed on record, does not call for any interference.

15. The last submission as urged by the petitioner is that the petitioner had become tenant of the respondent and, therefore, the proceedings under the Public Premises Act could not have been resorted to against the petitioner, as the petitioner was protected under the Maharashtra Rent Control Act 1999. The submission is wholly misconceived as it is crystal clear that what was leased to Excel was an open plot. There is no description to any structure either in the original registered lease 12th November 1960 or in the unregistered supplementary lease deed dated 30th July 1988, which has expired on 31st December, 2011. The learned District Judge in the impugned order has recorded a finding of fact in this regard on the basis of the

documents. The petitioners thus cannot dispute that what was leased at all material times was a open plot of land. It was never a specific case of the petitioner that what was leased were same structures. The provisions of Sections 7(9) of the Rent Control Act which define “Premises” are clear which do not include a open plot. The reasons as recorded in the impugned order, as regards the land being open land and the provisions of the Rent Control Act thus clearly being not applicable to the open land, in no manner require any interference. Again it may be noted that this plea is completely an after thought. The petitioner which is a public limited Company was completely aware about the legal position in respect of the said premises as also that the premises belonged to the Government company. I thus find no merit in the contention as raised by the petitioner on the plea regarding premises covered under Rent Control Act. In my opinion this was a lame defence as urged on behalf of the petitioner to escape the consequences of an eviction

16. There is another reason as to why the contention of the petitioner that the provisions of the Rent Control Act 1999 were applicable cannot be accepted. This is in view of the specific provisions of Section 3 of the Rent Control Act (as amended) which has come into force on

31/3/2000. Section 3(b) of the Maharashtra Rent Control Act, 1999 provides that the Rent Control Act shall not be applicable to a public limited company having paid up share capital of Rs. One Crore or more. It would be useful to extract section 3(1)(b) of the Maharashtra Rent Control Act, 1999 which reads thus:

“3. Exemption (1) This Act shall not apply

(a)

(b) to any premises let or sub-let to banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies, and private limited companies and public limited companies having a paid up share capital of rupees one crore or more.”

The petitioner has annexed to this petition at page 151 of the paper book the order dated 20/10/2005 passed by the learned Single Judge in Company Petition No.533/2005 and the scheme of amalgamation concerning the petitioner. The scheme of amalgamation clearly shows that the paid up share capital of the petitioner is more than Rs.1 crore and thus clearly the protective umbrella of the Rent Control Act would not be available to the petitioner on coming into force of the Maharashtra Rent Control Act 1999 w.e.f. 31/3/2000. Admittedly, a show cause notice was issued to Excel under 4(1) of the Public Premises Act on 29/3/2011 which was admittedly after the Maharashtra Rent Control Act, has come into force. It is thus clear that

the submission of applicability of the Rent Control Act is without any substance.

17. A similar contention as urged on behalf of the petitioners of the applicability of the Rent Control Act, had fell for consideration of the Supreme Court in case of *Central Bank of India vs. National Rayon Corporation Limited, (2014) 13 Supreme Court Cases 291*. The Supreme Court considering the position of the Public Premises Eviction Act vis a vis Rent Control Act and referring to several authorities on the issue and more particularly decision of the Supreme Court in the case of *Banatwala and Co. vs. LIC, (2011) 13 SCC 446*, it was held that the Public Premises Act, 1971 and the Rent Control Act were both referable to the concurrent List and will be valid in their respective spheres. It was held that the Public Premises Act will prevail to the extent of any repugnancy. It was held that to the extent it covers the relationship between landlord and the tenant viz., for eviction of unauthorized tenants and for recovery of arrears of rent, the Public Premises Act will apply and not in other aspects of their relationship. It would be profitable to note the observation of their Lordship in paragraph 5 to 8 of the decision which have become relevant in the present context which reads thus:

“5. Inasmuch as this submission has been raised by Mr. Andhiyarujina, learned senior counsel, we would like to point out that this judgment in *Dr. Pophale's case* clarifies the legal position as laid down by this Court earlier in the case of *Ashoka Marketing Ltd. & Anr. vs. Punjab National Bank & Ors.* reported in 1990 (4) SCC 406. That judgment has held that the Public Premises Act and the State Rent Control Acts were both referable to the concurrent list, and would be valid in their spheres, but Public Premises Act will prevail to the extent of any repugnancy. Therefore, this Court held earlier in the case of *Banatwala and Company vs. Life Insurance Corporation of India & Anr.* reported in 2011 (13) SCC 446 that to the extent the Public Premises Act covers the relationship between the landlord and the tenant, namely, for eviction of unauthorized occupants and for recovery of arrears of rent, the Public Premises Act will apply and not in other aspects of their relationship. This is why in *Banatwala's case* (supra) it was held that the application for the maintenance of the premises would lie to the Court of Small Causes in Mumbai, and it will not be hit by the provisions of the Public Premises Act. The issue in *Dr. Suhas H. Pophale's case* was as to when the Public Premises Act will apply, and it was laid down that the Act will not apply prior to the Act coming into force, and until the premises concerned belonged to the concerned public corporation, whichever is the later date. This was on the footing that if there are any welfare provisions in the statutes, the legislature cannot be intended to have taken them away if there is no repugnancy.

6. In *Dr. Suhas H. Pophale's case* the judgment of this Court in the case of *Rashtriya Mill Mazdoor Sangh, Nagpur vs. The Model Mills, Nagpur and Anr.* reported in AIR 1984 S.C. 1813 was specifically referred in paragraph No.29 to point out that if there is any welfare provision in a statute it cannot be taken away. This was in the context of the Payment of Bonus Act. It was also held that the judgment in *M/s Jain Ink*

Manufacturing Company vs. Life Insurance Corporation of India & Anr. reported in 1980 (4) SCC 435 did not consider the issue of protection in a welfare legislation to the tenant, prior to the premises becoming public premises, and the issue of retrospectivity. So also these issues were not in consideration in the case of Ashoka Marketing Ltd. (supra). In paragraph 49 of Dr. Pophale's case, this Court discussed the inter relation between Article 254(1) and 254 (2) of the Constitution, and specifically pointed out that the Government and the statutory corporations were taken out of the protective umbrella when the Maharashtra Rent Control Act was passed, and so they would be covered under the Public Premises Act, but of course from the date when the Act comes into force or from the date when the premises belong to the concerned Government corporation. What applies to the landlord, equally applies to the tenants.

7. *As far as the present action initiated by the Central Bank of India is concerned, the notice to evict was issued on 26th June, 2007, much after the Maharashtra Rent Control Act came into force on 31.3.2000. This Act clearly lays down that it shall not apply to Public Ltd. Companies having a paid up share capital of Rs. One Crore or more. Section 3 (1) (b) of the Act reads as follows:-*

3 Exemption

1) This act shall not apply

a)

(b) To any premises let or sub-let to banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions, international agencies multinational companies, and private limited companies and public limited companies having a paid up share capital of rupees one crore or more."

8. *There is no dispute that the respondent N.R.C. Ltd. is a company having a paid up share capital of more than rupees one crore. That being so,*

the protective umbrella of the State Rent Control Act which was available to the N.R.C. Ltd. would not be available to it beyond 31.3.2000. That being so, the provisions of Public Premises Act would clearly apply to these premise on or after 31.3.2000 for the purposes of eviction of unauthorised occupants and therefore, the action initiated by the Central Bank of India could not be faulted with.”

In view of the above clear position in law and considering the facts of the case there is no merit in the submissions of the petitioner on the applicability of the Rent Control Act.

18. Resultantly, it is thus clear that Excel and/or the petitioner continue to enjoy large public property which is almost one acre for purely commercial purpose with initially only paying a rent of Rs.250 per month and thereafter as pointed out by the learned Counsel for the petitioner at Rs.5445/- per month and lastly at Rs.10,000/- for only one month in 2011. Obviously the rent of Rs.10,000/- cannot be taken into account as the same appears to have been paid after the show cause notice was issued. The fact remains that the petitioner continues to occupy Government premises by taking full advantage of the fact that the Government company is itself sailing through difficult financial conditions and/or is in troubled waters. This would not in any manner justify the occupation of the premises of the Government Company by the petitioner and that too for commercial exploitation in the high cost

industrial belt at Pune. It is not the case that the petitioner with its financial resources and the position of its capital as revealed from the amalgamation scheme, cannot afford to acquire a plot from the open market, however a tendency to hold on the public property in such manner cannot be countenanced. Infact the concern of the appropriate Ministry of the Government, becomes imperative for such erosion of public money adversely affecting the public exchequer and ultimately the economy.

19. Lastly it may be observed that the prayers of the Petitioner are for a writ of certiorari, seeking to quash and set aside the impugned order passed by the learned District Judge. It is a settled principle of law that the jurisdiction of this Court to issue a writ of certiorari is very limited. The jurisdiction is not in the nature of an appellate power within the court weilds and hence the court would not re-appreciate the evidence and substitute its own view to the view taken by the Learned District Judge, when the findings of the learned District Judge are borned out by the record and are in no manner perverse and are completely within the legal parameters. The Supreme Court in its decision in the case of ***“Anoop Sharma v Executive Engineer, Public Health Division No.1(2010) II CLR 1)”*** following the observations of the Judgment of

the Constitution Bench of the Supreme Court in the case of “***Syed Yakoob v. K. S. Radhakrishnan (AIR 1964 SC 477)***” held that a Writ of Certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or tribunals where orders are passed without jurisdiction or in excess of jurisdiction. An error of law which is apparent on the face of the record can be corrected by a writ but not an error of fact however grave it may appear to be. The scope of exercise of jurisdiction under Article 226 of the Constitution of India has again been reiterated by the Supreme Court in the case of “***Devinder Singh and Municipal Council, Sanaur, (2011(130) FLR 337): (AIR 2011 SC 2532)***”. In this decision, the Supreme Court has again affirmed the view of the Constitution Bench Judgment in the case of ***Syed Yakoob v. K. S. Radhakrishnan***” (*supra*).

20. In view of the above deliberation I find no merit in the petition. The petition is accordingly rejected.

(G.S.KULKARNI, J)